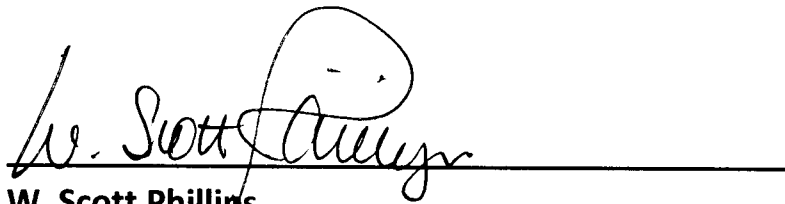


4/17/15

**Minutes
Meeting and Work Session of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 20, 2015**

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Rulemaking Committee of the Alabama Environmental Management Commission on February 20, 2015.

A handwritten signature in black ink, appearing to read "W. Scott Phillips", is written over a horizontal line.

W. Scott Phillips

Chair

Rulemaking Committee

Alabama Environmental Management Commission

Certified this 17th day of April 2015.

**Minutes
Meeting and Work Session of the
Rulemaking Committee of the
Alabama Environmental Management Commission
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400
February 20, 2015**

**Convened: 1:00 p.m.
Adjourned: 3:15 p.m.**

Part A

**Transcript
Word Index**

Part B

Attachment 1 - Agenda

Part A

Page 1

1
2 * * * * *
3
4 MEETING AND WORK SESSION OF THE
5 RULEMAKING COMMITTEE
6 OF THE
7 ALABAMA ENVIRONMENTAL MANAGEMENT
8 COMMISSION
9
10
11 ALABAMA DEPARTMENT OF ENVIRONMENTAL
12 MANAGEMENT
13 Alabama Room
14 1400 Coliseum Boulevard
15 Montgomery, Alabama 36110-2400
16
17
18 * * * * *
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20
21 Taken by: Bridgette W. Mitchell,
22 ACCR 231
23

Page 2

1 * * * * *
2
3 APPEARANCES
4
5 COMMITTEE MEMBERS PRESENT:
6 W. Scott Phillips, Chair
7 Mary J. Merritt
8
9 COMMITTEE MEMBERS NOT PRESENT:
10 Terry D. Richardson, Ph.D.
11
12 ALSO PRESENT:
13 Lanier Brown, II, Chairman of the
14 Commission
15 Robert Tambling, EMC Legal Counsel
16 Debi Thomas, EMC Executive
17 Assistant
18 Lance LeFleur, ADEM Director
19 Marilyn Elliott, ADEM Deputy
20 Director
21 Trey Glenn, Business Council of
22 Alabama
23 Jessica Trotman, Rushton, Stakely,
Johnston & Garrett
Mitch Reid, Alabama Rivers Alliance
Adam Johnston, Alabama Rivers
Alliance
Cindy Lowry, Alabama Rivers
Alliance
Katie Robertson Shaddix, Alabama
Rivers Alliance
Eva Dillard, Black Warrior
Riverkeeper
Nelson Brooke, Black Warrior
Riverkeeper
Michael Mullen, Choctawhatchee
Riverkeeper, Inc.
Ben Eaton, Black Belt Citizens
Fighting for Health and Justice
Ellis Long, Black Belt Citizens
Fighting for Health and Justice

Page 3

1 ALSO PRESENT (continued):
2 Esther Calhoun, Black Belt Citizens
3 Fighting for Health and Justice
4 Mary Shaeffer, Black Belt Citizens
5 Fighting for Health and Justice
6 Dick Bronson, Lake Watch of
7 Lake Martin
8 Keith Johnston, Southern
9 Environmental Law Center
10 Sarah Stokes, Southern Environmental
11 Law Center
12 Beth Stewart, Cahaba River Society
13 Myra Crawford, Cahaba Riverkeeper
14 Joe Howle, Vulcan Materials Company
15 Misha Mitchell, Black Warrior
16 Riverkeeper
17 Isabella Trussell, Logan Martin Lake
18 Protection Association
19
20
21
22
23

Page 4

1 COMMITTEE CHAIRMAN PHILLIPS:
2 Welcome to the Rulemaking Committee.
3 Acknowledge we do have a quorum. We do
4 not have Commissioner Terry Richardson.
5 He didn't want him to get snowbound from
6 the north, so he asked to not be able to
7 come today. But we're going to move
8 forward regardless.
9 We'll start with Agenda Item No. 1,
10 which is consideration of the minutes
11 from our meeting that we held on December
12 the 12th. I'll entertain a motion.
13 MS. MERRITT: So moved.
14 COMMITTEE CHAIRMAN PHILLIPS:
15 Second?
16 MS. MERRITT: Second.
17 COMMITTEE CHAIRMAN PHILLIPS: All
18 in favor signify and say aye.
19 MS. MERRITT: First and second.
20 (Unanimous.)
21 COMMITTEE CHAIRMAN PHILLIPS:
22 That was easy. Agenda Item No. 2.
23 Agenda Item No. 2 is really the working

<p>Page 5</p> <p>1 session that the Rulemaking Committee 2 crafted. Many of you were in the room 3 when we thought of that, and that's why 4 you're here today. What I'd like to do 5 is to start off -- I know most everyone 6 in the room, but everybody may not know 7 everyone else. So I'm going to ask that 8 we go around the room, make a very quick 9 introduction of yourself, who you're 10 representing, but keep it short because 11 there's a lot of us in the room. I'll 12 start, and then I'm going to ask you, as 13 we engage, for our court reporter, we 14 really need for you to start with your 15 name and your organization so we can get 16 it on the record. All right? 17 I'm Scott Phillips. I'm the vice 18 chair of the Environmental Management 19 Commission and the Chair of the 20 Rulemaking Committee. 21 MS. MERRITT: And I'm Mary 22 Merritt. I'm the commissioner at large. 23 COMMITTEE CHAIRMAN PHILLIPS:</p>	<p>Page 7</p> <p>1 MS. CRAWFORD: Myra Crawford, 2 Cahaba Riverkeeper, Birmingham. 3 MR. BRONSON: Dick Bronson, Lake 4 Watch of Lake Martin. 5 MR. MULLEN: Mike Mullen, 6 Choctawhatchee Riverkeeper, Troy. 7 MR. EATON: Ben Eaton, Black Belt 8 Citizens Fighting for Health and Justice, 9 Uniontown. 10 MR. GLENN: I'm Trey Glenn on 11 behalf of Business Council of Alabama. 12 MR. HOWLE: I'm Joe Howle, Vulcan 13 Materials Company. 14 MS. CALHOUN: I am Esther Calhoun 15 from Uniontown, Alabama, Black Belt 16 Citizens Fighting for Health and Justice. 17 MR. REID: Mitch Reid from the 18 Alabama Rivers Alliance based out of 19 Birmingham. 20 MS. TROTMAN: Jessica Trotman 21 from Rushton-Stakely. I'm here for 22 Dennis Bailey. 23 MS. STEWART: Beth Stewart with</p>
<p>Page 6</p> <p>1 Robert? 2 MR. TAMBLING: Robert Tambling. 3 I'm legal counsel for the Commission. 4 COMMITTEE CHAIRMAN PHILLIPS: 5 Chairman, we'll go with you and then go 6 around. 7 COMMISSION CHAIRMAN BROWN: 8 Lanier Brown, Chairman of the Commission. 9 MS. SHAEFFER: Mary Shaeffer with 10 Black Belt Citizens Fighting for Health 11 and Justice, from Uniontown. 12 MS. LONG: Ellis Long, also with 13 Black Belt Citizens Fighting for Health 14 and Justice in Uniontown. 15 MR. BROOKE: Nelson Brooke, Black 16 Warrior Riverkeeper out of Birmingham. 17 MS. DILLARD: Eva Dillard, Black 18 Warrior Riverkeeper. 19 MR. JOHNSTON: Keith Johnston, 20 Southern Environmental Law Center out of 21 Birmingham. 22 MS. STOKES: Sarah Stokes, 23 Southern Environmental Law Center.</p>	<p>Page 8</p> <p>1 the Cahaba River Society. 2 MS. LOWRY: Cindy Lowry, Alabama 3 Rivers Alliance. 4 MS. SHADDIX: Katie Shaddix, 5 Alabama Rivers Alliance. 6 MR. JOHNSTON: Adam Johnston, 7 Alabama Rivers Alliance. 8 MS. ELLIOTT: Marilyn Elliott, 9 ADEM. 10 MR. LeFLEUR: Lance LeFleur, 11 ADEM. 12 COMMITTEE CHAIRMAN PHILLIPS: In 13 the back? 14 MS. MITCHELL: Hi. I'm Misha 15 Mitchell, and I'm the legal intern for 16 Black Warrior Riverkeeper. 17 COMMITTEE CHAIRMAN PHILLIPS: And 18 in the back? 19 MS. TRUSSELL: Isabella Trussell, 20 Logan Martin Lake Protection Association. 21 COMMITTEE CHAIRMAN PHILLIPS: 22 Debi? 23 MS. THOMAS: I'm Debi Thomas with</p>

<p style="text-align: right;">Page 9</p> <p>1 the Environmental Management Commission. 2 COMMITTEE CHAIRMAN PHILLIPS: 3 Okay. I want to thank all of you for 4 being here. I know it's cold outside. 5 And by the swarm of people who wanted to 6 know when we were going to finish after 7 the Commission meeting, I know 8 everybody's anxious to get about it and 9 get on with it. So what I want to do is 10 start by saying we're going to open the 11 floor up, but don't everyone jump in all 12 at once. And hopefully we'll cover the 13 very topics that we've heard for quite a 14 while and the Commission shares in. If I 15 don't hear people who jump in, then I'm 16 going to throw them out one at a time and 17 then we can kind of debate those. 18 This is intended to be a dialogue, a 19 productive dialogue. It's not about a 20 decision that's coming out of this room 21 today. It's really to get your views of 22 what enhancements, if any, could be made 23 to our public-comment rule for us to</p>	<p style="text-align: right;">Page 11</p> <p>1 people who care about the, in this case, 2 the rivers in their backyard, we would -- 3 I personally would like to see a public 4 participation ethic that is in favor of 5 someone being able to come and approach 6 the Commission in a -- in a way that 7 says, Look, this is something that I see 8 that's on my mind that we're having 9 problems with or I'm concerned about, 10 without it being something that -- that 11 takes someone on a staff with a law 12 degree to work their way through the 13 process. 14 Now, recognizing that there's -- and 15 fully understanding Commissioner 16 Richardson's sort of other end of that 17 spectrum, but as -- if there was any way 18 of sort of putting the thumb on the scale 19 towards people being able to have an open 20 voice -- I understand that they don't 21 need to come and say things that you 22 don't need to hear about and that they 23 don't need to come and litigate their</p>
<p style="text-align: right;">Page 10</p> <p>1 consider. We will then take this 2 information, look back over it, talk to 3 Commissioner Richardson, who's not here, 4 and decide at our next meeting, which 5 will be in April, what, if anything, we 6 want to take to the Commission. Okay? 7 Anybody have any questions about the 8 process? 9 (No response.) 10 COMMITTEE CHAIRMAN PHILLIPS: 11 Good. Anyone want to start with an issue 12 that they believe would make our public- 13 comment period more productive? Mitch. 14 MR. REID: So I'm just sort of 15 trying to frame maybe the ideal that I 16 see, and -- and recognizing that that may 17 not be what the actual rule looks like, 18 but I feel like it's -- as an advocate 19 for not only the groups that we represent 20 that are staffed organizations but also 21 the groups that we represent that are 22 citizens groups that don't do this as 23 their full-time job, that they're just</p>	<p style="text-align: right;">Page 12</p> <p>1 case in front of you if you're going to 2 hear an appeal. I understand that there 3 are parameters. But if there's a way of 4 just putting the favor in -- towards 5 someone being able to speak. 6 The example that I think of is the 7 Water Resources Commission in OWR's 8 meeting. At the end of the meeting, it's 9 not a formal process. I've never seen 10 anyone say, I want to present to the 11 Water Resources Commission, but at the 12 end of the meeting they say, Is there 13 anybody in the back that would like to 14 say anything? And that -- that's a 15 public participation, a really informal 16 way of doing it but it still allows 17 people to say, I appreciate what you're 18 doing or I've got some issues. So maybe 19 just framing the question. 20 COMMITTEE CHAIRMAN PHILLIPS: 21 That's a good start, because I think 22 it -- it raises kind of an end state that 23 you believe we should be working toward.</p>

<p style="text-align: right;">Page 13</p> <p>1 I think it's one that we believe we 2 should be working toward. I think our 3 experiences give us concern in some 4 areas, and one of those areas that I'll 5 throw out for the group to help us think 6 about how to manage is people that come 7 to the Commission and want to address us 8 about issues that we have no mechanism in 9 law, regulations, or otherwise to help 10 them with. And while I'm all for putting 11 the thumb on letting people get up and 12 talk about what they want to, if I can't 13 help them, if I'm not legislatively 14 authorized to do something, they're 15 really wasting their time, and we don't 16 want to waste their time. We don't want 17 to frustrate them.</p> <p>18 And a good example of this is land- 19 use planning. We don't do land-use 20 planning. That's a local responsibility. 21 It's something that when people come to 22 us and say, We don't want this landfill 23 in our county, well, if it meets the</p>	<p style="text-align: right;">Page 15</p> <p>1 I'm Eva Dillard with Black Warrior 2 Riverkeeper. I've been attending the EMC 3 meetings for about five years, and I 4 don't think I have -- and I could be 5 wrong -- I don't think I've ever 6 witnessed a public presentation that 7 wasn't in some way related to the 8 responsibilities that the EMC has or 9 that -- or that address items that ADEM 10 oversees. I would just like to know, how 11 big of a problem is this? How big of an 12 issue are off-topic citizen 13 presentations? because I don't know that 14 I've ever witnessed one, but I might lead 15 a sheltered life.</p> <p>16 COMMITTEE CHAIRMAN PHILLIPS: 17 Well, I've been here a lot longer than 18 five years --</p> <p>19 MS. DILLARD: Right.</p> <p>20 COMMITTEE CHAIRMAN PHILLIPS: -- 21 so maybe I'm relying on things. But it 22 is an issue and it's one that we would 23 like your help in at least addressing.</p>
<p style="text-align: right;">Page 14</p> <p>1 permit requirements, we really don't have 2 the wherewithal to do anything about that 3 other than to look at them after they've 4 finished ten minutes and say, Have you 5 spoken with your local representatives, 6 your local governments? So on the hand 7 of letting people get up and talk, I 8 think we're for that when it really is 9 something that we can do something about.</p> <p>10 So one of the thoughts that we've 11 had is to make sure that we do a better 12 job of helping the public know what it is 13 we can do something about, whether it's 14 about setting policy, setting rules or 15 regulations, or holding the Department 16 director accountable. Beyond that, the 17 only other thing we do, which we don't 18 take public comment about, is hearing 19 appeals or hearings that come before us.</p> <p>20 How do we manage that, the two of 21 those? Any thoughts?</p> <p>22 MS. DILLARD: I have a quick 23 question, maybe, before we answer that.</p>	<p style="text-align: right;">Page 16</p> <p>1 If it doesn't happen, that's great.</p> <p>2 MS. DILLARD: Right.</p> <p>3 COMMITTEE CHAIRMAN PHILLIPS: 4 Then we don't have to deal with it. But 5 if it does, how do we make sure that we 6 get people where they need to be? Cindy?</p> <p>7 MS. LOWRY: One suggestion I 8 think that -- I think we made in our 9 comments -- we maybe evolved it a little 10 since then -- was that there be some kind 11 of template for the request or the 12 submittal so that it says exactly what 13 you need to hear, and that could -- you 14 know, obviously who you are and what your 15 issue is, but another category could be 16 what is the EMC's role in resolving -- 17 what do you see as EMC's role? So that 18 puts it on us a little bit to say -- to 19 make the case that we have the 20 responsibility that we're -- you know, we 21 understand what we're asking you to do, 22 but also gives you a chance to tell us 23 what you need to hear from us. That</p>

<p style="text-align: right;">Page 17</p> <p>1 could be on a website form, could be -- 2 obviously needs to be downloadable as 3 well for people that don't have Internet. 4 So that's an idea for that. 5 COMMITTEE CHAIRMAN PHILLIPS: 6 That's a good idea and I think that 7 really kind of touches on the edge of 8 where I was talking about an example, for 9 example, a landfill in the county. Even 10 when individuals come -- and I think many 11 of you that have come before us in the 12 last year have seen a difference of us 13 really asking you, when you talk to us, 14 What do you think we could do, which kind 15 of gets to your -- and maybe we should be 16 a lot more proactive about a template. 17 I think the other item that we've 18 learned from the group of many of you in 19 this room is there's this perception that 20 we don't take comments except right 21 before our meeting or at the end of our 22 meeting. We really -- and not everyone 23 wants to travel here from across the</p>	<p style="text-align: right;">Page 19</p> <p>1 staff is going to sit down and look 2 through all those, so having it be a 3 midnight on day of deadline would be 4 tremendously helpful. 5 COMMITTEE CHAIRMAN PHILLIPS: 6 Someone raised their hand over here. I'm 7 sorry. 8 MS. CRAWFORD: Mine is very 9 similar. Myra Crawford, Cahaba 10 Riverkeeper. I was wondering, would you 11 be comfortable receiving e-mail requests 12 to speak? Would that be a way that you 13 would be comfortable receiving that 14 request? 15 COMMITTEE CHAIRMAN PHILLIPS: You 16 mean personally? 17 MS. CRAWFORD: I mean, would that 18 be -- that be helpful if you had -- 19 COMMITTEE CHAIRMAN PHILLIPS: I 20 think what's helpful, if we decide that 21 e-mail requests are okay for requesting 22 coming before the Commission to talk, I 23 think we would still want it to go</p>
<p style="text-align: right;">Page 18</p> <p>1 state to make a comment, so one of the 2 thoughts that Commissioner Richardson had 3 was we really need to be a little more 4 proactive in letting people know that 5 they're welcome to provide comments to us 6 at any time, written -- written, and 7 e-mail. Right now you can't really -- 8 can't even do e-mails; right? So, I 9 mean, that's really an area where we need 10 to catch up with the technology that 11 passed us. 12 MR. TAMBLING: Well, I think they 13 can make e-mail comments, but I don't 14 think you can make a request to appear 15 before the Commission through e-mail. 16 MS. STEWART: I have a pretty 17 simple request. Beth Stewart, Cahaba 18 River Society. I think that it be 19 changed to allow e-mail requests and, in 20 doing so, we'd like to ask you to do what 21 everybody else does, which is 5 p.m. is 22 not really a meaningful deadline for an 23 e-mail request because nobody at 5:01 on</p>	<p style="text-align: right;">Page 20</p> <p>1 through Debi, because I get two or three 2 or four hundred e-mails a day. 3 MS. CRAWFORD: I didn't mean 4 personally. 5 COMMITTEE CHAIRMAN PHILLIPS: Oh, 6 okay. 7 MS. CRAWFORD: I mean to a single 8 person. 9 COMMITTEE CHAIRMAN PHILLIPS: I 10 mean, Debi, you deal with e-mails. Is 11 that cumbersome? 12 MS. THOMAS: No. I think e-mails 13 would be fine, an e-mail request. For my 14 logistics standpoint, I think that would 15 be fine. 16 MS. MERRITT: Probably just like 17 we do the -- you know, the way we did 18 before, you just got to have rules with 19 the e-mail, you know, it's got to be in a 20 certain day. That's what I'm thinking 21 about. 22 COMMITTEE CHAIRMAN PHILLIPS: 23 That may be a way to help with the</p>

<p style="text-align: right;">Page 21</p> <p>1 templating that Cindy was talking about. 2 MS. MERRITT: Yeah. 3 COMMITTEE CHAIRMAN PHILLIPS: I 4 mean, it doesn't bother me. Seems like 5 everything I do nowadays is on e-mail. 6 MR. JOHNSTON: I have a comment, 7 Commissioner. Adam Johnston, Alabama 8 Rivers Alliance. I do think it's 9 important that we provide a variety of 10 avenues for individuals to contact. I do 11 agree that e-mail should be a way. Added 12 to it, I also feel like a phone call 13 should be able to call in Debi and say -- 14 we live in a time and age where not 15 everybody deals on e-mail, or we still 16 have individuals who don't necessarily in 17 our state rely and survive on e-mail; and 18 I'd like to be able to see somebody be 19 able to pick up a phone, call the 20 executive assistant, and be able to go 21 through that process. We still rely on 22 phones and people should be able to do 23 this person-to-person thing and not --</p>	<p style="text-align: right;">Page 23</p> <p>1 But with regard to different people 2 around the state and their ability to 3 send e-mails/not send e-mails, that 4 also -- I think someone mentioned their 5 ability to drive down here, willingness/ 6 desire to stand in front of a commission 7 and make remarks. You know, that's -- 8 takes a different thought process to do 9 that. I'm a big believer if somebody, no 10 matter whether you're on the 11 environmentalist side, the business side, 12 or just the, most importantly, the 13 citizen side, wants to reach out to you 14 as the policy-setting board to tell you 15 something, say Lance and the Department 16 are doing a great job, doing a bad job, 17 whatever, whatever they want to tell you, 18 I mean, you need to consider this, you 19 need to consider that, they should be 20 able to do that. And there's a lot of 21 mechanisms for doing that. 22 The one thing, though, from a 23 business standpoint that concerns me</p>
<p style="text-align: right;">Page 22</p> <p>1 and so I would like to see there be able 2 to be a call-in option to be on the 3 agenda. 4 MS. DILLARD: Eva Dillard. I 5 think Adam makes an excellent point. 6 And, you know, there was some recent 7 information released that about 35 8 percent of the households in Alabama 9 don't have a computer at home, and so I 10 think if we can expand the opportunities, 11 you're going to reach some folks who may 12 not have a computer. And chances are, if 13 they don't have a computer, they're 14 certainly not going to have a fax 15 machine, because the fax machines are on 16 the way out. I don't know of many folks 17 who even use them anymore. 18 COMMITTEE CHAIRMAN PHILLIPS: 19 Okay. Thanks. 20 MR. GLENN: Trey Glenn on behalf 21 of Business Council. And obviously I 22 have a very different perspective now 23 than I may have a few years ago on this.</p>	<p style="text-align: right;">Page 24</p> <p>1 about comments is, sometimes when people 2 stand up and start talking, maybe you 3 don't -- you're not hearing what they're 4 trying to say, maybe their words are 5 different and so the messages sometimes 6 get a little garbled and may get even 7 misinterpreted, and that may have 8 negative ramifications on folks who 9 are -- then spend time, energy, and money 10 and resources and -- to respond to 11 something, and maybe they don't even need 12 to respond to it, it was just 13 misunderstood. 14 So I'm a big fan of doing this kind 15 of stuff in writing, because it gives 16 y'all absolute clarity and it gives the 17 person who may be snowed in today up in 18 wherever Alabama the opportunity to tell 19 you something. I mean, I'm assuming put 20 it on the record so everybody in the 21 world can see it and it's part of the 22 minutes and -- but not have to get in a 23 car and drive -- drive down here. They</p>

<p style="text-align: right;">Page 25</p> <p>1 can do that for y'all, then if y'all get 2 it, have some time and you have to get a 3 letter in from somebody for this 4 commission meeting and if you see it and 5 you have a question, say, Listen, this is 6 important, I'd like you to come, we have 7 questions for you, do you mind coming and 8 addressing the Commission? We'd like to 9 talk to you about it. Give them a 10 certain amount of time. Y'all can invite 11 them down and talk to you about it. But 12 that would just cut down on some of the 13 confusion and maybe some of the back and 14 forth that comes from the comment period. 15 MR. MULLEN: Mike Mullen, 16 Choctawhatchee Riverkeeper. I think what 17 Trey said is important, too. I think 18 we've had instances where people have 19 come all the way down here and then their 20 request is denied, and maybe the better 21 process would be if we don't know whether 22 it's going to be approved or not is for 23 them to make the request and defer that</p>	<p style="text-align: right;">Page 27</p> <p>1 up with those and not -- they not just go 2 into a black hole, because then that sort 3 of makes those seem useless for the 4 public that's doing it. 5 And then this is, I guess, maybe a 6 more difficult subject or more -- not 7 contentious but I think there's a 8 perception on our part maybe at times 9 that when you guys want the written 10 comment or the written work ahead of time 11 and the certain criteria and all that, 12 it's so that you can posture yourselves 13 for defense because maybe we're -- we are 14 perceived that we're coming to you with 15 some kind of complaint or some kind of 16 problem at ADEM, which often -- at the 17 EMC, which often we might be. So these 18 perceptions of sort of getting a defense 19 posture both sides to say, Okay, we need 20 all this time to prepare ahead of time so 21 that we can defend ourself. And we're 22 like, Why do you need all this time just 23 to hear from the public? So I guess I</p>
<p style="text-align: right;">Page 26</p> <p>1 to the next EMC meeting so that 2 somebody's not driving all the way -- 3 give them the option if they don't want 4 to drive down here for that meeting to 5 get the approval and come to a later 6 meeting. 7 COMMITTEE CHAIRMAN PHILLIPS: So 8 if they request -- 9 MR. MULLEN: Say they made a 10 request for the April -- 11 COMMITTEE CHAIRMAN PHILLIPS: And 12 we're not sure, because it's the full 13 Commission that makes that determination. 14 Wait until that determination's been 15 made. 16 MS. LOWRY: Cindy with the 17 Alabama Rivers Alliance. That brings up 18 a couple of thoughts, one as to the -- 19 your mention earlier, taking in written 20 comments all the time. You know, I don't 21 think that's a bad idea. I do think 22 there needs to be some mechanism, which 23 will put more work on you guys, to follow</p>	<p style="text-align: right;">Page 28</p> <p>1 just want to throw that out on the table 2 as -- I'm not saying that those 3 perceptions are correct on either side. 4 I'm just saying -- 5 COMMITTEE CHAIRMAN PHILLIPS: 6 Well, perception is reality. 7 MS. LOWRY: So I think that we 8 don't -- as we said in our comments, we 9 understand the need to prepare for our 10 presentations and especially if -- some 11 of these subjects are pretty -- need some 12 education level ahead of time, and I 13 think that's good. I guess I just want 14 to throw that out there as -- prepare so 15 that you can ask questions to the 16 presenter is one thing. Prepare so that 17 you can -- so they can set up some kind 18 of rebuttal or something is -- is 19 something that was brought up in comments 20 I think warrants discussion. 21 COMMITTEE CHAIRMAN PHILLIPS: I 22 agree. 23 MR. MULLEN: It's sort of like</p>

<p style="text-align: right;">Page 29</p> <p>1 there's a prebuttal, and it makes it 2 appear at times that the Commission is 3 not really giving a lot of thought to 4 something when as soon as the person 5 finishes their presentation they're 6 getting a prebuttal. And if you're 7 really going to digest something, I think 8 it'd be more professional, look a lot 9 more seemly if -- the Commission 10 shouldn't feel like it has to make a 11 response to that presentation at the 12 meeting, and it seems like we've got more 13 and more of those cases. And some of 14 those -- I'm not going to point any 15 fingers, but some of them have almost 16 been condescending type of rebuttals. 17 And it would be much better if the 18 Commission took that presentation under 19 advisement, got back in communication 20 directly with that individual 21 organization or brought it up at a later 22 meeting. 23 COMMISSION CHAIRMAN BROWN: But</p>	<p style="text-align: right;">Page 31</p> <p>1 more work on Debi or Lance's crew or 2 whatever -- but if that written 3 communication to the Commission could go 4 on e-file and the responses could go on 5 e-file, as long as they're not -- as long 6 as they're appropriate, that might help 7 make people more amenable and make less 8 presentation -- fewer presentations. 9 MR. REID: Just to -- this is 10 Mitch Reid. Just to dovetail off of 11 that, which I don't really see the 12 presentations that I give as necessarily 13 a way of venting, but I think it is a way 14 of -- of sort of standing in the public 15 eye and saying this is something that we 16 see, like, for instance, today, on the 17 horizon that we want to be a part of and 18 sort of let everyone know that it's 19 something we're working on. 20 If -- communications in writing can 21 be a much more efficient way, but I think 22 there does have to be a way of recording 23 that so that people can see that that</p>
<p style="text-align: right;">Page 30</p> <p>1 wouldn't it be better just to do that in 2 writing -- 3 MR. MULLEN: Yeah. Right. 4 That'd be -- 5 COMMISSION CHAIRMAN BROWN: -- 6 rather than have -- 7 MR. MULLEN: The exchange, that 8 response, could be in writing. 9 COMMISSION CHAIRMAN BROWN: But 10 rather than come up here and speak to me 11 and me say nothing but write you a letter 12 later, wouldn't it be better for you just 13 to write me and I write you back? 14 MR. MULLEN: There is one -- 15 there is one value of making that 16 presentation. It takes -- some people 17 need to vent a little bit and get rid of 18 a little bit of the anger and -- and I 19 think there's some benefit in the 20 presentations that they just don't get in 21 writing. I know I send things to the 22 Commission. And to get to another 23 something somebody brought up -- it'd put</p>	<p style="text-align: right;">Page 32</p> <p>1 conversation is happening; otherwise, you 2 do lose that -- that public exchange, 3 like the Commission has been asked to 4 work on this issue, it's within their 5 wheelhouse, according to the regulations, 6 and someone stood up and said it; that's 7 a very public act. And a writing can -- 8 can meet that as long as it's also open 9 and -- and available for people to say, 10 Okay, we see that exchange. So that's 11 sort of -- kind of what Mike was saying 12 but a little different. 13 MR. GLENN: Trey Glenn on behalf 14 of Business Council. And I can happily 15 say I have not read y'all's minutes in 16 about five years or so. But I'm 17 assuming, though, there's some mechanism 18 if we've got an industry person who wants 19 to say, ADEM Commission, there's a policy 20 and there's a rule coming out, I just 21 want you to be aware of it, much like 22 Mitch did today, there's something coming 23 out, I want to make sure you're aware of</p>

<p style="text-align: right;">Page 33</p> <p>1 it. Good. I mean, that's good. Most of 2 my guys are running plants right now. 3 They can't -- they can't drop everything 4 and get down here and spend hours talking 5 to you about this stuff because they're 6 working and doing items they can't get 7 away from. So if that is the case, if 8 they wrote something very clearly and 9 said, Commissioners, I want you to be 10 aware of this, can y'all put that -- 11 attach it to the record? I mean, as long 12 as you get it in a certain amount of time 13 and everything so, therefore, it's very 14 clear, there's no reason -- I mean, we 15 can point to it and say, You got this 16 letter. You can't ignore it. We're 17 concerned about coal ash as well and we 18 want to make sure it's fair and not, you 19 know, unnecessarily harmful jobs and the 20 like. But could you take that written 21 correspondence and put that in the record 22 so that it's publicly out there? 23 COMMITTEE CHAIRMAN PHILLIPS:</p>	<p style="text-align: right;">Page 35</p> <p>1 personal presentations and appearing 2 before you, that that would then 3 substitute. And I strongly recommend 4 against that. Having that time to have 5 face-to-face, build relationships with 6 the EMC on issues is critically 7 important. We're losing that kind of 8 personal communication and connection in 9 our society in so many ways, and that's 10 really vitally important. Plus, there 11 are people who communicate in various 12 ways, and there are some people who may 13 communicate really well in writing and 14 there are other people who communicate 15 really well in conversation and directly. 16 There are some people who like to use 17 presentations where photographs might be 18 essential, and the rest of us often want 19 to hear as well what's being presented to 20 the Commission and be able to think about 21 that. And it's part of a community 22 conversation around environmental 23 conservation in the state. And so I</p>
<p style="text-align: right;">Page 34</p> <p>1 Yeah. I'm sitting here listening to that 2 and I'm thinking I don't know if there's 3 anything that would prevent us from doing 4 it now. It's public -- 5 MR. GLENN: Like you acknowledge 6 it or something at the meeting. 7 COMMITTEE CHAIRMAN PHILLIPS: 8 Yeah. I don't see any reason we couldn't 9 do that. Good suggestion. And I think 10 it gets to -- I don't remember if it was 11 Mike or -- the whole issue of kind of 12 that seamlessness that happens between 13 that exchange. Beth? 14 MS. STEWART: Beth Stewart, 15 Cahaba River Society. I agree that it 16 would be wonderful to be able to make 17 comments in writing and it would be 18 excellent if those would be recorded and 19 it would be excellent if there were 20 responses in writing. But I'm a little 21 uncomfortable. What I think I'm hearing 22 is some indicating that that would be a 23 substitute for coming down and making</p>	<p style="text-align: right;">Page 36</p> <p>1 think it's very important to maintain 2 that, not to substitute the written. But 3 I think adding the written is really 4 valuable. 5 COMMITTEE CHAIRMAN PHILLIPS: 6 And, once again, while we don't 7 specifically say in the rule written -- 8 written comments are always welcome, 9 written comments are always welcome. I 10 mean, maybe we need to be more deliberate 11 in the way we lay that out. But we would 12 always take written comments. I don't 13 know that at this point we've kind of 14 talked about whether we attached them to 15 the record or not like you suggested. 16 That's something I think we need to think 17 about. 18 MR. REID: Before we lose this 19 subject -- Mitch Reid -- I just would 20 like to take the opportunity to commend 21 ADEM and their e-file system, which is, 22 given our work with other agencies, state 23 and federal, the ability to -- to always</p>

<p style="text-align: right;">Page 37</p> <p>1 have the record. I would certainly like 2 to see some improvements on the search 3 function of it, but the idea and the 4 ability is -- is leaps and bounds above 5 some others. I don't know if e-file is 6 the appropriate clearinghouse for EMC 7 documents going forward. I mean, 8 certainly I think saying we received this 9 letter on this topic in the intervening 10 time is something that would be helpful 11 on this -- you know, on that meeting. 12 But, you know, to sort of keep that in 13 the -- in the -- in storage, e-file is a 14 wonderful way of doing that with some 15 additional search capability, if we can 16 get that.</p> <p>17 COMMITTEE CHAIRMAN PHILLIPS: 18 Lance, can you address that? I mean, is 19 that capability there?</p> <p>20 MR. LeFLEUR: Yeah. We have 21 already on there Director's 22 correspondence. We also have the 23 Commission minutes and so forth on there.</p>	<p style="text-align: right;">Page 39</p> <p>1 the citizens always have to come bring 2 you the problem that's going on in 3 Uniontown? Is there an overseer of ADEM 4 that goes around to check different 5 things? You know, like, for instance, 6 the water is leaking into whatever- 7 whatever or there's something going on, 8 you know, that's not right. Is there a 9 ground person like there's a water 10 person, there's a land person? Who does 11 that with ADEM? What do ADEM do? That's 12 what I'm asking. You know, we come in 13 and we say, This is going on. I'm trying 14 to get an understanding because I'm a 15 citizen, you know, from Uniontown, and we 16 deal with a lot of environmental 17 problems.</p> <p>18 Okay. ADEM gives the permit, but 19 then you know it's a lot of things that's 20 not right in, you know, that whole thing. 21 But what I'm saying is, what does ADEM do 22 to -- I know a permit is okay, but if 23 it's the wrong kind of permit, what I'm</p>
<p style="text-align: right;">Page 38</p> <p>1 There's a place that it can be slotted. 2 I don't think that's any problem.</p> <p>3 COMMITTEE CHAIRMAN PHILLIPS: 4 Thanks. Have we kind of beat that one to 5 death or do you have anything else to say 6 about that one?</p> <p>7 (No response.)</p> <p>8 COMMITTEE CHAIRMAN PHILLIPS: 9 Okay. Any other big topic that jumps to 10 your mind before I throw one out?</p> <p>11 MS. CALHOUN: I'd like to ask a 12 question.</p> <p>13 COMMITTEE CHAIRMAN PHILLIPS: 14 Yes, ma'am.</p> <p>15 MS. CALHOUN: Okay. You say you 16 guys give out permits; right?</p> <p>17 COMMITTEE CHAIRMAN PHILLIPS: 18 Uh-huh.</p> <p>19 MS. CALHOUN: Okay. What 20 procedures do you go through? Like, 21 Uniontown is a big environmental 22 injustice place. You know, we're always 23 dealing with problems. Why is it that we</p>	<p style="text-align: right;">Page 40</p> <p>1 saying is, if it's right -- the person's 2 house is right there and then you go give 3 them permit to have a landfill -- we'll 4 just use that as an example -- what makes 5 it right to give a person -- give the 6 landowner a permit when it's going to be 7 environmental injustice or racial 8 injustice? You know, it's just too close 9 to a house. What kind of rules do y'all 10 have to say they don't need a permit 11 because it's too close to these people's 12 home? Does that person that goes 13 ground -- I'm not talking about on the 14 computer. Everybody's doing the 15 computer. But the 911 stuff don't really 16 direct you to my house, not in Uniontown. 17 You may go to 105 Jones, but you're not 18 going to be at 105 Jones because we don't 19 have a real -- so how do you determine 20 that the landowners can have a permit? 21 That's what I'm asking.</p> <p>22 COMMITTEE CHAIRMAN PHILLIPS: 23 Well, we have rules and regulations that</p>

<p style="text-align: right;">Page 41</p> <p>1 set whether or not something can be 2 permitted. So whether they can get a 3 permit is based on the rules and 4 regulations that are set by ADEM. 5 However, that doesn't necessarily include 6 location or placement, for example, 7 because if your local council or 8 commission has authorized land use -- 9 that was the example I gave earlier -- 10 then that's their jurisdiction to deal 11 with. Ours is to deal with the 12 environmental impacts of that. And we do 13 have a process. And once that permit is 14 issued, then ADEM is responsible for 15 making sure that whoever has that permit 16 is operating in compliance with that 17 permit. 18 MS. CALHOUN: Okay. 19 COMMITTEE CHAIRMAN PHILLIPS: The 20 best way we have to know whether 21 people -- because this is a big state and 22 a lot of people -- is when people tell us 23 that there's a problem. That's why we</p>	<p style="text-align: right;">Page 43</p> <p>1 you know, evidently, there's going to be 2 some problems. So what I'm asking is, 3 why not, when you know that these -- that 4 there's always environmental problems, 5 why don't they do a second check? 6 MR. LeFLEUR: Well, normally if 7 it's generated from a complaint, we will 8 go out and investigate the complaint. 9 And if we find that there's some sort of 10 a violation, we'll take action to -- to 11 tell these people to correct the 12 violation. And then we go back and check 13 to see if they've actually done what they 14 were supposed to do. Now, we take -- we 15 do a number of inspections on sites where 16 there is no complaint. We just go out 17 and inspect to sample, to see if people 18 are doing what they're supposed to do. 19 Now, we don't do every site every, you 20 know, year. We try to go where the 21 highest risks are or where we've received 22 complaints. Now, we're not always 23 perfect. I can readily concede that.</p>
<p style="text-align: right;">Page 42</p> <p>1 have an e-complaint system. 2 MS. CALHOUN: Okay. What about 3 ADEM, why not -- they're not going to do 4 a second look? You know, when you have a 5 project done, why don't they come back 6 and say, Well, let's see how well this is 7 working? 8 COMMITTEE CHAIRMAN PHILLIPS: 9 Well, they do have periodic inspections; 10 right? I mean, you're better at walking 11 through the process than I am because you 12 do it. 13 MR. LeFLEUR: Well, certainly. 14 People can file complaints either, like 15 you say, on the computer, but they can 16 also just call us up. 17 MS. CALHOUN: I mean, why do we 18 have to call y'all up and you're ADEM? 19 Why can't ADEM come out -- if they got a 20 new project going on, they just started 21 and you have a lot of complaints from 22 certain people from, like, from 23 California -- they're always coming. So</p>	<p style="text-align: right;">Page 44</p> <p>1 But if our people are not being 2 responsive, then you can call me. I 3 don't -- I don't make the inspections, 4 but if somebody is not making an 5 inspection in your area, I can certainly 6 go and talk to those people and make sure 7 that they are. It's a communication sort 8 of thing and we don't want people to 9 suffer through things that they believe 10 are not the way they should be. But we 11 have to know about those things before we 12 can react. 13 COMMITTEE CHAIRMAN PHILLIPS: And 14 at the same time, as the Director said, 15 there is a schedule of doing inspections 16 even if there's not a complaint. But 17 there are just so many people at ADEM and 18 so many facilities that have to be 19 inspected, so it's a matter of time. So 20 it can be much quicker if somebody calls 21 and says there's a problem than 22 potentially if we have to wait till we 23 get a cycle where we're going to check on</p>

<p style="text-align: right;">Page 45</p> <p>1 somebody. You know, we hope we get there 2 sooner, but if somebody sees something, 3 that's why we encourage those complaints. 4 MR. LeFLEUR: We've tried to 5 streamline the complaint process and some 6 people have access to computers and 7 certainly some do not, but if somebody 8 does have access to a computer -- they 9 can go to their library, for example, and 10 access their computer -- and the 11 e-complaint system, you don't have to say 12 your name or you can if you want to. If 13 you want to tell us your name, we'll get 14 back to you and we'll tell you what we 15 did. You can go on there and look and 16 see what's happened on that complaint day 17 by day. But that's sort of an education 18 communication process. We want to get 19 that word out. 20 COMMITTEE CHAIRMAN PHILLIPS: And 21 for us, it's an early-warning system. 22 It's a way for us -- 23 MR. LeFLEUR: Oh, absolutely.</p>	<p style="text-align: right;">Page 47</p> <p>1 welcoming complaints, the idea of 2 allowing a public comment period after 3 presentation, such as Virginia, Oregon, 4 there are EMCs across the country that 5 allow a public comment period to give a 6 three-minute complaint for people -- for 7 people in the meeting. How do you guys 8 feel about that? What are your -- what 9 are your -- I know the Alabama 10 legislature, for example, when you have a 11 legislative committee hearing, it allows 12 for anybody who wants a public comment 13 period or public hearing to speak. You 14 have to ask for that in advance, but they 15 allow for that. So I was wondering what 16 your thoughts are. 17 COMMITTEE CHAIRMAN PHILLIPS: 18 When you said that you have to ask in 19 advance, I assume you mean you sign up at 20 the beginning of the meeting or -- 21 MS. STOKES: Well, you sign up, 22 but then you -- anybody who wants to 23 request a public hearing, you can request</p>
<p style="text-align: right;">Page 46</p> <p>1 COMMITTEE CHAIRMAN PHILLIPS: -- 2 to hear about things sooner than we may 3 otherwise know. It may -- I'm sure it 4 feels like it takes forever and why 5 aren't we just out there looking anyway. 6 MR. LeFLEUR: Well, some 7 people -- some people are bothered by 8 complaints. We want complaints. The 9 reason we want complaints is we can go to 10 ten sites just randomly and we might find 11 one violation. If somebody sends us a 12 complaint, the chances are very good we 13 can go out one time and find a violation. 14 It saves us a lot of time and a lot of 15 effort if we can get people to file those 16 complaints. We want to encourage people 17 to use that system. And, please, you 18 know, we'd be happy to help you -- we 19 have an education process, a couple of 20 them, over in Uniontown to work through 21 that, but we can come back and have 22 another one or two of those. 23 MS. STOKES: Speaking of</p>	<p style="text-align: right;">Page 48</p> <p>1 it 24 hours in advance, depending on when 2 the notice was published. So you can 3 request a public hearing 24 hours in 4 advance, you know, based on when the 5 notice was -- for the hearing was, and 6 that's how it works there. So I wondered 7 if that would work -- 8 COMMITTEE CHAIRMAN PHILLIPS: I'm 9 easily confused, so -- 10 MS. STOKES: So what happens 11 is -- 12 COMMITTEE CHAIRMAN PHILLIPS: 13 Before -- well, let me -- 14 MS. STOKES: Yeah. 15 COMMITTEE CHAIRMAN PHILLIPS: -- 16 explain why I'm confused -- 17 MS. STOKES: Okay. 18 COMMITTEE CHAIRMAN PHILLIPS: -- 19 and maybe that will help. I thought we 20 were -- you started with kind of an open 21 get up and say three minutes from anybody 22 that's in the room. 23 MS. STOKES: Right.</p>

<p style="text-align: right;">Page 49</p> <p>1 COMMITTEE CHAIRMAN PHILLIPS: And 2 now we've kind of progressed to 3 requesting a public hearing. Which one 4 are we dealing with? 5 MS. STOKES: Well, they would be 6 one and the same, really. I mean, I 7 guess my -- any way you want to do it, 8 because y'all are obviously the decision- 9 makers. So it would be you could do 10 where people sign up when they get here 11 to speak three minutes at the end of -- 12 at the end of the meeting or you can do 13 it where somebody if they feel like 14 there's going to be a lot of people to 15 discuss an issue can request a public 16 hearing 24 hours in advance of the 17 meeting. However y'all wanted to do it. 18 My only point is, how do you feel about 19 allowing people, anybody, who wants to 20 register a complaint to speak at the end 21 of the meeting? That would be my only -- 22 that would be the goal, to get people -- 23 you don't have to register 14 days or</p>	<p style="text-align: right;">Page 51</p> <p>1 repeal rules and we set environmental 2 policy. So if your complaint is about 3 one of those three items, I want to hear 4 about it. If your complaint is, I've 5 complained to him for six months and he 6 hasn't done anything about it, we want to 7 hear it, because that's one of our 8 responsibilities. But if you're coming 9 before us to say -- and this has 10 happened -- Eva, this has happened -- 11 we've got a complaint about an 12 environmental issue and then we ask the 13 question have you talked to the 14 Department, the answer is no. 15 So for us, you know, our immediate 16 turn for a real environmental complaint 17 is has it gone through a process where 18 the Department's been engaged? If they 19 have and you're unhappy with the outcome, 20 we want to hear it. If you have and 21 you're very happy with the outcome, we'd 22 love to hear that, too. But if it's to 23 really tell us for the first time that --</p>
<p style="text-align: right;">Page 50</p> <p>1 seven days in advance to allow the public 2 to speak. 3 COMMITTEE CHAIRMAN PHILLIPS: Do 4 you want to jump in or I'll start? 5 MS. MERRITT: You can start. 6 COMMITTEE CHAIRMAN PHILLIPS: I'm 7 all for the public speaking, but I'm for 8 the public speaking in things that we can 9 do something about. You say somebody 10 wants to make a complaint. We would hope 11 that if they really had complaints they 12 would have dealt with the Department 13 prior to a Commission meeting with a 14 complaint that the Department was working 15 toward resolving, either determining that 16 there really was a violation or, yeah, 17 there's something but it's not really a 18 permit violation that we need -- that we 19 can do much about other than trying to 20 assist people. 21 If someone's before our Commission, 22 we hold the Director accountable for the 23 Department. We promulgate, modify,</p>	<p style="text-align: right;">Page 52</p> <p>1 that somebody's discharging something off 2 their property onto your property, the 3 first question we're going to ask is have 4 you talked to the Department; and if the 5 answer is no, we're going to ask the 6 Director to get with you right after the 7 meeting. 8 So from the standpoint of hearing 9 that, I want to hear it. But it's going 10 to be a much more efficient process for 11 you if it's a complaint that the 12 department should be dealing with that 13 you go to the Department first. 14 I'm intrigued by the concept of the 15 three-minute period. I think we've 16 always -- I mean, the real issue for us 17 is managing the meeting, and our meetings 18 last short times and sometimes they last 19 long. And for us to be prepared -- and 20 someone said this earlier -- I don't 21 recall whom -- said, you know, sometimes 22 maybe you don't have to respond to it 23 right there in that meeting and you just</p>

<p style="text-align: right;">Page 53</p> <p>1 let it go and maybe at the next meeting 2 you have to do that. I don't think we've 3 done a very effective job of doing that. 4 I think we try to -- if somebody comes to 5 us, we kind of take it on and we try to 6 deal with it right then. Maybe we need 7 to relax that a little bit. But it's 8 managing how many people do we hear from 9 in a day. 10 And maybe it's our perception -- 11 maybe it's the wrong perception -- that 12 there's this thought that if somebody's 13 really got an issue that they're 14 passionate about that the more people 15 that they put in front of us and the more 16 times they tell us that it's a problem 17 that it makes it more significant. And 18 to me it doesn't matter if one person 19 tells me or ten people tell me about the 20 same complaint/issue. As long as it's in 21 my wheelhouse and responsibility, I weigh 22 them the same. 23 So what we're trying to do is</p>	<p style="text-align: right;">Page 55</p> <p>1 have signed up to talk for two or three 2 minutes, will that be productive for 3 people? 4 MS. STOKES: Absolutely. 5 COMMITTEE CHAIRMAN PHILLIPS: As 6 long as it's around the areas where we 7 can -- 8 MS. STOKES: Right. Sure. Make 9 that a rule. 10 MR. REID: In preparing for -- 11 for a presentation today, I wanted to 12 have a slide show that had some pictures 13 and sort of put some thought into that, 14 that -- you know, and I knew I had a ten- 15 minute block that I wanted to fill. That 16 wouldn't, I don't think, personally, be 17 appropriate for me to show up with a 18 PowerPoint and say, I'd like to get on 19 the agenda for my ten-minute 20 presentation, you know, because that -- I 21 mean, as far as my personal expectation 22 of being able to get that in, it would 23 just -- I don't think I should expect</p>
<p style="text-align: right;">Page 54</p> <p>1 balance management of a meeting and 2 giving people the opportunity to talk 3 while at the same time not going through 4 an hour -- and it's been a long time 5 since it's happened, but it has happened, 6 where we've had many, many people who 7 want to come up and tell us about the 8 same thing. And we hear it, but then we 9 still have the struggle -- and this is 10 what really started this whole process 11 with Commissioner Richardson -- is I want 12 to help, I want to do something about 13 them, what do I do differently so that I 14 can do something about it. 15 So do you think if we said, Okay, 16 we've got people that have responded in 17 writing, we made that a part of the 18 record, we've got someone who wants to 19 make a presentation -- coal ash, like you 20 did today -- we've got someone who's kind 21 of gotten on the agenda to do that, is 22 going before the Commission, and then at 23 the end we say, And for any of you that</p>	<p style="text-align: right;">Page 56</p> <p>1 that. 2 So I do think that there is a role 3 for saying, I would like to be on the 4 agenda for the -- an allotted amount of 5 time -- ten minutes is a fair amount to 6 me -- and I would expect that I would 7 provide that if I was going to use some 8 sort of aid like a PowerPoint that I 9 would send that in ahead of time so we're 10 not trying to load that in. 11 I also think that there can be a 12 role for I'm -- I've got an issue and I'd 13 like to just say something about it at 14 the end of a meeting and sign up. My -- 15 my sense of the way that that would work, 16 if I were setting something up, would be 17 that there was a sign-in sheet that said, 18 you know, here's -- here's sort of the 19 requirements. If you've got something on 20 that subject, please sign up. And if -- 21 you know, to the extent that there's time 22 at the end of the meeting, I think the 23 Commission should absolutely be able to</p>

<p style="text-align: right;">Page 57</p> <p>1 say we've had -- we've got five appeals 2 that we had to hear today plus three 3 rulemakings that ADEM brought before me 4 plus two people who signed up ahead of 5 time with presentations, we're just out 6 of time for that meeting. 7 I think -- and I think that also 8 saying that there is -- that public 9 comment for people signing up can be 10 limited to, you know, 20 minutes at the 11 end of the meeting, 10 minutes, 30 12 minutes, or whatever is the appropriate 13 time to say we're not going to stay here 14 all day because 400 people have signed 15 up. I mean, if you -- using the example 16 of the Legislature, they take in a 17 sign-in sheet and it's for and against, 18 because that's sort of the nature of that 19 game, but it's for and against to the 20 extent that there's time allotted. You 21 may have hundreds of people signed up 22 against a bill, two people signed up for. 23 Those X hundred people are not all going</p>	<p style="text-align: right;">Page 59</p> <p>1 MR. REID: That's always the -- 2 that's why lawyers get involved. 3 COMMITTEE CHAIRMAN PHILLIPS: 4 That was a good topic. Thank you. Yes, 5 ma'am? 6 MS. LONG: Ellis Long, Black Belt 7 Citizens. Going back to the idea of 8 sending in a presentation and then 9 getting a response before the meeting 10 that might tell you that it's okay to 11 come this meeting or maybe we'd have to 12 put it off till the next meeting, to me 13 that's not very practical, because some 14 of the issues are more urgent than that. 15 And so I would suggest that when Debi 16 gets the presentation -- and we've always 17 sent ours by e-mail. I didn't realize 18 that was unusual. But, anyway -- 19 COMMITTEE CHAIRMAN PHILLIPS: I 20 think getting the document is not 21 unusual, by e-mail. 22 COMMISSION CHAIRMAN BROWN: The 23 request comes by fax.</p>
<p style="text-align: right;">Page 58</p> <p>1 to get to speak. It's only going to be 2 the people who signed up first. If you 3 want to come back -- certainly if you 4 want to get on the agenda, let us know 5 ahead of time; that's the best and 6 preferred way of doing something. And, 7 also, I think every time that there is a 8 chance to sign up there should also be 9 this is what we can hear, this is what 10 we're -- this is what we're here for, so 11 that it -- so someone's saying I want 12 to -- 13 COMMITTEE CHAIRMAN PHILLIPS: So 14 it can be managed. 15 MR. REID: Right. I think 16 that's -- I mean, think -- there has to 17 be -- and David Ludder, I think, made 18 that comment in his letter -- that 19 reasonable restrictions are absolutely 20 necessary so that you can make this 21 meeting work. 22 COMMITTEE CHAIRMAN PHILLIPS: 23 Just the definition of "reasonable."</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. LONG: The request. When she 2 gets it, I know she sends it to the 3 Chair, and I think that I've understood 4 that the Chair sends it around to the 5 other members of the Commission. Is that 6 not right? Yes? 7 COMMITTEE CHAIRMAN PHILLIPS: 8 Chair -- 9 COMMISSION CHAIRMAN BROWN: I 10 think Debi does it, but -- 11 COMMITTEE CHAIRMAN PHILLIPS: 12 About what his disposition of it is, yes. 13 MS. LONG: Yeah. What I'm trying 14 to say is, the Chair either recommends 15 that the person can speak or recommends 16 against it. So I don't see really why 17 the whole Commission couldn't make a 18 decision by getting the presentation. 19 Why couldn't they make a decision ahead 20 of time so that the person -- if the 21 person is going to be allowed to speak, 22 they could get a final decision? 23 COMMISSION CHAIRMAN BROWN: I</p>

<p style="text-align: right;">Page 61</p> <p>1 think -- I think the law requires us to 2 have a meeting to have a decision. 3 MS. LONG: Does it? 4 COMMITTEE CHAIRMAN PHILLIPS: To 5 take an action. 6 COMMISSION CHAIRMAN BROWN: To 7 take an action. So I can make -- 8 MS. LONG: You have to actually 9 have a physical meeting? 10 MR. HOWLE: You have to have a 11 quorum. 12 COMMISSION CHAIRMAN BROWN: You 13 have to have a quorum. You have to have 14 a meeting. So I can make a 15 recommendation or announce that I will 16 recommend it. And I think I've only been 17 bucked once. 18 MS. DILLARD: Not to pull us too 19 far down in the weeds, but our board has 20 a similar policy and we have authorizing 21 regulations that allow an e-mail vote to 22 be taken if everyone unanimously agrees 23 that there can be an e-mail vote without</p>	<p style="text-align: right;">Page 63</p> <p>1 that's important about those rules is 2 that we do have an open and public 3 process when decisions are made, when 4 votes are taken, and to do it by e-mail, 5 even though, you know, from a technology 6 standpoint that that's very achievable -- 7 and I understand that a group like yours 8 would do that -- it makes things work a 9 lot easier. 10 From a public standpoint, though, 11 and a public group, a commission, I just 12 don't see that that's tenable, and the 13 reason being is the threat of -- of 14 accusations. And I certainly know that 15 none of these guys up here want to be in 16 front of the Ethics Commission because 17 somebody sent in a complaint about an 18 e-mail vote that they had or maybe 19 somebody hacks their e-mail account or, 20 you know, all these different things. So 21 I think that the Sunshine Law itself is 22 in place for a very good reason, and -- 23 to take these public votes so that you</p>
<p style="text-align: right;">Page 62</p> <p>1 a meeting, and then there has to be a 2 quorum for the decision. So there might 3 be a way -- and obviously Robert would 4 know this, whether y'all have the ability 5 to do that -- or you could always ask 6 for, you know, the Legislature if you 7 don't have the ability to do that under 8 your regulations and can't -- can't 9 change that, you can ask for help from 10 the Legislature, because at the end of 11 the day, what you want to do is make your 12 process work for you, obviously, but also 13 work for the citizens. 14 MR. HOWLE: Let me weigh in on 15 that. If -- I'm Joe Howle, Vulcan 16 Materials Company. That would require 17 certainly changing the Sunshine Laws in 18 the state of Alabama. And, you know, one 19 of the -- and just so you know, I'm on 20 the Water Commission for the State of 21 Alabama, so we're -- we fall under the 22 same rules that these guys do, from a 23 meeting standpoint. One of the things</p>	<p style="text-align: right;">Page 64</p> <p>1 are -- you're in the spotlight when you 2 take those votes. That's just -- 3 MS. DILLARD: I think your point 4 is well taken, but I also point out there 5 are different kinds of votes. There's 6 substantive votes and there are votes 7 that fall more on administrative or the 8 administrative kind of aspect, and to 9 me -- and the Commission obviously might 10 look at this differently -- if you are 11 going to have a robust public 12 participation and public comment process, 13 then these sorts of decisions you can't 14 and won't be discriminating on people's 15 viewpoint or the content of their 16 presentation or what they want to say; it 17 will just be a topic and you either want 18 to hear it or you don't. But I do think 19 you've raised some good concerns about, 20 you know, some other things in play that 21 might make it more complicated. 22 MR. HOWLE: I don't think that 23 the law discriminates as to what you can</p>

<p style="text-align: right;">Page 65</p> <p>1 and can't do. You have to -- 2 COMMITTEE CHAIRMAN PHILLIPS: 3 Yes, please. 4 MS. TROTMAN: Any kind of -- I'm 5 Jessica Trotman. I'm with Rushton- 6 Stakely, and we do a lot with the APA, 7 the Alabama Press Association. And 8 Dennis Bailey, who I'm here for, I 9 believe, was a big help with the Sunshine 10 Laws when they were admitted back in 11 2005. Regardless, this is a government 12 agency. Any kind of vote, any kind of 13 rule or whatever it is that you guys 14 make, it has to be made in an open forum. 15 Even discussions about what is going to 16 be voted on has to be open to the public. 17 And the whole purpose, like he said, 18 behind the Sunshine Law is to make sure 19 that the agency isn't viewed as somebody 20 having closed-door meetings so, you know, 21 nobody can come in and say you're doing 22 something unethical or you're doing 23 something behind closed doors and you</p>	<p style="text-align: right;">Page 67</p> <p>1 given after that law was passed, we were 2 told there was no such thing as a 3 distinction between a decision. 4 MS. DILLARD: Okay. 5 COMMITTEE CHAIRMAN PHILLIPS: 6 That a decision was a public meeting 7 event regardless of what the decision 8 was. So we have abided by that. And he 9 makes sure. 10 MS. LOWRY: So that brings us 11 back to -- this is Cindy with Rivers 12 Alliance. That brings us back to the 13 problem that she was talking about, is 14 how to -- how do citizens prepare for 15 potentially being denied when they get 16 here? And, you know, they're going to 17 take off work to get here potentially. 18 You know, I mean, obviously it's not a 19 problem for me. I'm a staff 20 organization. I think Mike's suggestion 21 was potentially -- you know, recommend 22 that we can't promise you'll be done 23 at -- you know, we'll vote at this</p>
<p style="text-align: right;">Page 66</p> <p>1 didn't give another person an opportunity 2 to come in and speak and give their 3 viewpoint. It's kind of like having 4 serial meetings, going from office to 5 office asking people, Well, what's your 6 opinion, how are you going to vote, and 7 going ahead and deciding how you're going 8 to vote before you actually submit it to 9 the public for them to understand what 10 you're dealing and why you're voting on 11 that. 12 But, I mean, it's state law. So 13 right now there's no way possible to have 14 an e-mail vote for a state agency. That 15 would be a direct violation and anything 16 you voted on would be overturned and 17 subject to, you know, lawsuits and all 18 that stuff, not something you definitely 19 want. 20 COMMITTEE CHAIRMAN PHILLIPS: You 21 guys most certainly said it better than I 22 was going to say it. All I was going to 23 say is through the training that we were</p>	<p style="text-align: right;">Page 68</p> <p>1 meeting, you can speak at the next 2 meeting, if it's not an urgent issue. 3 But if it's a more urgent issue, that's 4 still -- and I believe that the 5 Commissioners have also brought up a 6 concern about the Chair being -- sort of 7 recommending approval. 8 COMMITTEE CHAIRMAN PHILLIPS: I 9 think their concern is that we're putting 10 the Chair in the middle of something that 11 he's making a recommendation that -- 12 MS. LOWRY: Yeah. 13 COMMITTEE CHAIRMAN PHILLIPS: -- 14 the Commission needs to act upon. I'm 15 not speaking for all the Commissioners. 16 I'm speaking for me. But what that 17 basically does is, if the Commissioner 18 sits there and really doesn't want to 19 hear it, truly doesn't believe that 20 that's a good recommendation -- no 21 offense -- that they have a right to 22 vote, that they don't agree with that 23 recommendation. And that puts the</p>

<p style="text-align: right;">Page 69</p> <p>1 Chairman -- he makes the recommendation, 2 but he really doesn't make the decision 3 on who speaks before the Commission. 4 MS. LOWRY: So not being an 5 attorney and exploring this concept, the 6 Chair is allowed to make a 7 recommendation. Can the other 8 Commissioners just also send in a letter 9 that says I would recommend this be 10 approved and it would all just be 11 individual letters saying 12 recommendations? 13 COMMITTEE CHAIRMAN PHILLIPS: 14 Well, I mean, I'm not a lawyer either and 15 I'm not going to practice law, but I 16 think the reason we did that was to 17 manage meetings so that information came 18 to Commissioners prior to a meeting. 19 Now, I'm going to throw -- I'm going to 20 get back to your urgency one, because I 21 think "urgency" was the basis of yours. 22 We have time. I think, Mike, your idea 23 is a good model, maybe, to go to, much</p>	<p style="text-align: right;">Page 71</p> <p>1 director. I don't see y'all doing urgent 2 day-to-day -- 3 COMMITTEE CHAIRMAN PHILLIPS: And 4 maybe that's the answer. But when you're 5 talking about the other, what I was going 6 to throw out there is we also have this 7 issue that we do not get anyone telling 8 us they want to talk to us until the 9 deadline that we set that says you have 10 to tell us by this day, and then there's 11 a flood, a flood as in two, three, four, 12 sometimes five. But everybody then wants 13 to tell us. And the reason we moved it 14 where we did was so that we actually have 15 time, because if we put it 24 hours 16 before, we'd get it 24 hours before, 17 would be our perception, because that's 18 what happens now. We get it -- how many 19 days, Debi? Fourteen? 20 MS. THOMAS: Yes. 21 COMMITTEE CHAIRMAN PHILLIPS: 22 Fourteen days before we need to know, and 23 that's when we find out, for the most</p>
<p style="text-align: right;">Page 70</p> <p>1 more deliberate in preparing and having 2 the person who comes before us prepared 3 where we can do more of a dialogue. 4 An urgency, though, I think we -- if 5 it's really urgent, we need to be acting 6 on something. But the Chair does have 7 the right to call a special meeting. 8 MR. MULLEN: Mike Mullen, 9 Choctawhatchee River. I don't understand 10 what the urgency is. If it's urgent, 11 there's an environmental threat or 12 something, then it goes to the 13 Department. 14 COMMITTEE CHAIRMAN PHILLIPS: I would 15 hope it would go to the Department. 16 MR. MULLEN: I don't see what the 17 Commission does as being urgent. 18 COMMITTEE CHAIRMAN PHILLIPS: 19 It's not day-to-day extreme. It really 20 should be the Director dealing with 21 those. If it's urgent to the point that 22 we would need to meet and make a -- 23 MR. MULLEN: Y'all are managing a</p>	<p style="text-align: right;">Page 72</p> <p>1 part. 2 MR. MULLEN: Mike Mullen again, 3 Choctawhatchee Riverkeeper. I'm probably 4 saying too much, but one way to -- I 5 think a lot of things that come before 6 you are policy or policy-related, that 7 one way that we're not making quite that 8 many presentations that would be 9 productive is to once or twice a year -- 10 I assume there's a policy committee or if 11 there isn't, perhaps there should be a 12 policy commission -- 13 COMMITTEE CHAIRMAN PHILLIPS: The 14 Rulemaking Committee. It's this one. 15 MR. MULLEN: But maybe once a 16 year you set aside a meeting for people 17 to bring policy things, everything that 18 people around this table may think is 19 important policy that may not be coming 20 down as an EPA directive. It may be 21 something unique to Alabama. And say 22 occasionally, once a year, circulate and 23 see if there's enough interest and maybe</p>

<p style="text-align: right;">Page 73</p> <p>1 do that and have some things done in a 2 more constructive -- like we're doing 3 today, more constructive manner. 4 COMMITTEE CHAIRMAN PHILLIPS: 5 That's a good point. And I think maybe 6 the answer to the urgency is really what 7 is it that would come before us that 8 would be so urgent that we would need -- 9 I mean, we do have mechanisms for 10 gathering the Commission quickly, but I 11 don't -- I don't know of much of anything 12 that's ever come before us that needed 13 something that quickly. 14 MS. LONG: Well, we thought it 15 was urgent that toxic wastewater was 16 going into the creeks around our town, 17 but I guess it's not so urgent because 18 it's been happening for decades. 19 COMMITTEE CHAIRMAN PHILLIPS: And 20 you've called on the Department to deal 21 with that? 22 MS. LONG: Yeah. For a long 23 time. But, you know, just the idea of</p>	<p style="text-align: right;">Page 75</p> <p>1 something came to the Chair, the Chair 2 would have that conversation. And if -- 3 I'm not putting words in your mouth, so 4 you shouldn't have stayed. 5 COMMISSION CHAIRMAN BROWN: You 6 mean I would make a phone call and read 7 somebody the riot act? 8 COMMITTEE CHAIRMAN PHILLIPS: 9 Yeah, I do. And if it necessitated 10 anything beyond that, you would take that 11 into consideration. 12 MR. REID: Just to dovetail in on 13 that. Mitch Reid. The idea of the 14 recommendation from the Chair I do see as 15 serving a purpose not to say that the 16 Commissioners should or should not vote 17 on it. I think that the voting 18 process -- what the recommendation does 19 for me is, is allows me to at least get a 20 first-blush idea of whether I've met the 21 criteria. If the Chair says, I'm not 22 going to recommend this because this 23 doesn't fall under the purview, it still</p>
<p style="text-align: right;">Page 74</p> <p>1 waiting another two months since you -- I 2 think you-all meet only every two months; 3 right? 4 COMMITTEE CHAIRMAN PHILLIPS: 5 That's right, every other month. 6 MS. LONG: That seems like a long 7 time to have to wait when you prepared 8 for one month, a certain month. 9 COMMITTEE CHAIRMAN PHILLIPS: 10 Well, I mean, if we do something like 11 Mr. Mullen said, I mean, that could mean 12 that we get it, we talk about it, and we 13 decide, and then it's another two months. 14 MS. STOKES: Right. It'd be four 15 months. 16 MS. LOWRY: Yeah. That case 17 where they feel they've tried to address 18 it with ADEM and it hasn't been addressed 19 satisfactory would be, I guess, the one 20 where it would be more urgency to the 21 person that's involved. 22 COMMITTEE CHAIRMAN PHILLIPS: But 23 I do believe that in that case, if</p>	<p style="text-align: right;">Page 76</p> <p>1 has to come to a vote of the EMC, I would 2 imagine, and the Chair would say my -- my 3 recommendation is that it doesn't meet 4 the vote or meet the requirements. 5 Also, under the current way rules 6 are set up, the Chair lets you know that 7 you didn't meet the deadline or if it 8 came in. So we had a situation where we 9 mailed something that we thought would be 10 received in the correct amount of time 11 and for whatever reason didn't get in, 12 which is probably saying more about the 13 federal postal service than anything. 14 The fact is, is that the recommended -- 15 the notification from the Chair about us 16 being tardy with meeting the rules kept 17 us from bringing down a whole host of 18 people to come down and make a 19 presentation that was denied, 20 essentially. Had we not got that notice 21 and had it been -- somebody has to be the 22 gatekeeper to say, This looks like it's 23 what we're looking for.</p>

<p style="text-align: right;">Page 77</p> <p>1 And I -- I completely understand 2 that my recommendation to have people 3 sign up outside is going to monkey with 4 that, but for a presentation you're 5 asking for a full ten minutes, that sort 6 of thing, that seems fair to have 7 somebody say, you know, this is really a 8 question for ADEM. On that note, the -- 9 there are times where ADEM, the Director 10 or his staff, should be brought in ahead 11 of time, the situation where you have 12 asked for relief of an environmental 13 problem numerous times and you don't feel 14 like action is taken, then you want to 15 speak to the EMC. You're essentially 16 asking the EMC to exercise its oversight 17 authority over the Director. 18 On other cases where you're asking 19 the EMC to develop environmental policy, 20 there is no reason for me to go to ADEM 21 and ask them about what the EMC should do 22 on environmental policy as far as the 23 rules read. I mean, it may be good</p>	<p style="text-align: right;">Page 79</p> <p>1 Were taken. Yeah. 2 MR. REID: -- were taken. So I 3 just want to make sure that if it's 4 within the wheelhouse of the EMC, 5 development of environmental policy, 6 well, that's fully in that wheelhouse. 7 COMMITTEE CHAIRMAN PHILLIPS: I 8 mean, unfortunate -- 9 MR. REID: I just jumped two 10 subjects there, so I'm sorry. 11 COMMITTEE CHAIRMAN PHILLIPS: I'm 12 going to kind of go back to the other 13 one, the first one. On behalf of 14 Commissioner Richardson -- and I'm not 15 speaking for him. Just from what we've 16 heard him say to us in meetings. And you 17 guys have heard some of this. I don't 18 believe that Commissioner Richardson's 19 concern is that there shouldn't be an 20 evaluation of someone's request and how 21 it meets the requirements of the rule. 22 He thinks it's unfair that the chairman 23 gets put in the position of being the one</p>
<p style="text-align: right;">Page 78</p> <p>1 practice. They're smart people. I would 2 not talk about environmental or water 3 policy without going to Glenda and trying 4 to figure out what's going on. But as 5 far as just who makes the rules, the 6 requirement that I go to ADEM and exhaust 7 that avenue before going to the EMC just 8 really doesn't fit in with the way that 9 it's set up. 10 COMMITTEE CHAIRMAN PHILLIPS: I 11 don't think I was -- if you're referring 12 to my reference to that, mine was more 13 toward the complaints of environmental 14 issues. 15 MR. REID: This is in the -- in 16 the sort of recommended proposed actions 17 that we read on -- online -- 18 COMMITTEE CHAIRMAN PHILLIPS: Oh, 19 in the notice? 20 MR. REID: -- that all reasonable 21 avenues of approach or something with 22 ADEM -- 23 COMMITTEE CHAIRMAN PHILLIPS:</p>	<p style="text-align: right;">Page 80</p> <p>1 that has to do that because he believes 2 that the criteria are objective enough 3 that, frankly, Debi could do that, I 4 mean, go through the requirements, as she 5 really does anyway. And what -- I mean, 6 the Chair making a recommendation, Debi 7 sends to all the Commissioners, this 8 requirement came in, met the timeline, 9 has the materials, covers the areas that 10 the EMC is responsible for checked. It's 11 really at that point we all can vote on 12 it at the meeting, so it really -- I 13 mean, you said you really like that 14 recommendation from the Chair, but he's 15 really doing what she could do. 16 MR. REID: I like the gatekeeper. 17 COMMITTEE CHAIRMAN PHILLIPS: 18 Okay. All right. So it doesn't really 19 matter -- 20 MR. REID: -- if it's Chairman 21 Brown or you or Robert. 22 COMMITTEE CHAIRMAN PHILLIPS: 23 That helps me, because I was wondering</p>

<p style="text-align: right;">Page 81</p> <p>1 the merit of really continuing to have 2 the Chair do it or just let Debi give it 3 to us as this one meets, this one 4 doesn't. 5 MR. TAMBLING: The Commission 6 office. 7 COMMITTEE CHAIRMAN PHILLIPS: 8 Yeah, the Commission office. Yes, sir. 9 MR. EATON: Ben Eaton, Black Belt 10 Citizens. On the many different ways of 11 making the request, whether it's a 12 presentation, e-mail, letter, or e-file, 13 I would like to ask if ADEM can increase 14 their files so that a citizen can send a 15 photo that will -- you know, we all heard 16 that a picture is worth a thousand words. 17 But when the files are so small that one 18 can't send that picture to actually 19 explain or demonstrate what they're 20 saying, I'm asking if they can consider 21 increasing -- 22 COMMITTEE CHAIRMAN PHILLIPS: Is 23 that an issue that we've encountered?</p>	<p style="text-align: right;">Page 83</p> <p>1 We ought to be able to do it as long as 2 the Internet will allow us to do that. 3 MR. LeFLEUR: We are limited by 4 transmission capabilities. 5 COMMITTEE CHAIRMAN PHILLIPS: 6 And, Marilyn, when you look into it, 7 think of a way or see if there's a -- I 8 call it Drop Box now, but it used to be 9 called something else. I just can't 10 remember what it was. But basically 11 where you can upload to something that 12 takes the pressure -- because I know you 13 use the Internet for your day-to-day. So 14 see if there's at least someplace where 15 they can be uploaded to be retrieved or 16 dumped at a more reasonable time for you. 17 Yes, ma'am. 18 MS. CALHOUN: Just a question. 19 Like, can y'all consider video 20 presentation? You know, like, for 21 instance -- I'm not saying putting the 22 job on y'all, but sometimes you can take 23 out time, like a person just want to</p>
<p style="text-align: right;">Page 82</p> <p>1 (Multiple people speaking.) 2 MR. LeFLEUR: We have the ability 3 to upload photographs. I don't know what 4 the outer limit on size of file. 5 MS. LONG: Two kilobytes. 6 MR. EATON: Two. 7 MS. LONG: Two kilobytes? 8 MR. EATON: Two megabytes. 9 MS. LONG: That's the limit. And 10 that's too small. 11 MR. LeFLEUR: Of course, you 12 could make multiple entries. Or if you 13 would like to contact us about providing 14 those photographs in another format, 15 either an e-mail or something like that. 16 You know, if you call, we can make 17 arrangements to deal with the situation. 18 I don't know. Can we go higher than two 19 megabytes? 20 MS. ELLIOTT: Maybe. 21 MR. JOHNSTON: Please. Please. 22 MS. ELLIOTT: I don't know the 23 answer to that, but I'll look into it.</p>	<p style="text-align: right;">Page 84</p> <p>1 video what they wanted to say to you and 2 you can have a special meeting that you 3 can just view that? 4 COMMITTEE CHAIRMAN PHILLIPS: 5 We've actually had videos come before us 6 where people played a video; the 7 individual wasn't at the meeting and they 8 just played the video. 9 MS. CALHOUN: So, you know, 10 because sometimes people are not -- 11 COMMITTEE CHAIRMAN PHILLIPS: So 12 we have that capability. 13 MS. CALHOUN: -- comfortable in 14 doing presentations. 15 COMMITTEE CHAIRMAN PHILLIPS: 16 Right. 17 MS. CALHOUN: And that saves 18 time. And then you have a limit, too. 19 Well, you respond to their presentation 20 within so many days. 21 COMMITTEE CHAIRMAN PHILLIPS: 22 Yeah. Yeah, I think we can do that. I 23 think -- I know we've accommodated that</p>

<p style="text-align: right;">Page 85</p> <p>1 in the past.</p> <p>2 MS. CALHOUN: That will save time</p> <p>3 for -- you know, you say you got so many</p> <p>4 people you have to tend to.</p> <p>5 COMMITTEE CHAIRMAN PHILLIPS:</p> <p>6 Right.</p> <p>7 MS. CALHOUN: So if they send in,</p> <p>8 you know, like a presentation that Ben</p> <p>9 had one time, that he could just be</p> <p>10 talking about it. Not no long one. You</p> <p>11 have a limit of time how long you can</p> <p>12 talk and get to a point, you know. And</p> <p>13 so the, you know, Commissioners and the</p> <p>14 Chairman could video -- I mean, you know,</p> <p>15 view it.</p> <p>16 COMMITTEE CHAIRMAN PHILLIPS:</p> <p>17 View it, yeah.</p> <p>18 MS. CALHOUN: And then make a</p> <p>19 decision within so many days.</p> <p>20 COMMITTEE CHAIRMAN PHILLIPS: I</p> <p>21 think we have that capability to do that,</p> <p>22 so yes, I think that's something we need</p> <p>23 to take as part of this.</p>	<p style="text-align: right;">Page 87</p> <p>1 MR. JOHNSTON: Yeah, because he</p> <p>2 was one of the first person who made</p> <p>3 public comments in regards to some of</p> <p>4 these things that y'all brought up, and</p> <p>5 one it seemed like he was -- he was</p> <p>6 interested in the amount of times</p> <p>7 individual organizations were coming in</p> <p>8 front of you, very much similar to what</p> <p>9 your comment was. And I see it very,</p> <p>10 very differently, and I feel like a</p> <p>11 citizen or an organization or a community</p> <p>12 should be able to come in front of you</p> <p>13 every single time until they feel that</p> <p>14 situation has been dealt with adequately,</p> <p>15 and that requires a response and followup</p> <p>16 from the EMC on what the Director and his</p> <p>17 agency is actually doing to go back to</p> <p>18 the community and actually deal with</p> <p>19 these issues. And we're not seeing that</p> <p>20 one, I don't think, adequately, from</p> <p>21 ADEM's stance on complaints. That's a</p> <p>22 whole other situation.</p> <p>23 But on the issue of the EMC actually</p>
<p style="text-align: right;">Page 86</p> <p>1 But let me ask a question relative</p> <p>2 to that, because we've kind of -- we've</p> <p>3 talked about this item as a piece of</p> <p>4 everything that's been said, and that's</p> <p>5 the response. What is the expectation</p> <p>6 that you guys have -- business,</p> <p>7 environmental, citizens -- of when you</p> <p>8 bring something to the Commission around</p> <p>9 policy, rules, regulations, the</p> <p>10 Department, what type of response are you</p> <p>11 looking for?</p> <p>12 MS. CALHOUN: Action.</p> <p>13 COMMITTEE CHAIRMAN PHILLIPS:</p> <p>14 Action. That's a good word.</p> <p>15 MS. LONG: Solve the problem.</p> <p>16 MR. JOHNSTON: Yeah. And more</p> <p>17 response from -- Adam Johnston. I feel</p> <p>18 like part of the -- part of the initial</p> <p>19 response from Commissioner -- I believe</p> <p>20 it was Richardson, and he's not here. I</p> <p>21 wish he was able to be here.</p> <p>22 COMMITTEE CHAIRMAN PHILLIPS: He</p> <p>23 really wanted to be.</p>	<p style="text-align: right;">Page 88</p> <p>1 addressing public issues, what is being</p> <p>2 done after this? And I don't feel like</p> <p>3 the Director's rebuttal is a chance to</p> <p>4 dictate that. And I think that there</p> <p>5 should be a very formal stance on how the</p> <p>6 EMC follows up with these situations,</p> <p>7 what the agency is doing. And not just a</p> <p>8 rebuttal from the Director right there,</p> <p>9 an actual written piece of whatever we're</p> <p>10 talking about. Have something written</p> <p>11 that you can put on the file that says</p> <p>12 that we went and we did this</p> <p>13 investigation, listening sessions,</p> <p>14 monitoring, whatever it needs to be to --</p> <p>15 so that the citizens aren't coming up</p> <p>16 here every two months with the same type</p> <p>17 of complaints because there's not</p> <p>18 satisfactory issues being done with the</p> <p>19 Department and these communities.</p> <p>20 And my experience has been that, is</p> <p>21 that the citizens are coming up here</p> <p>22 because they're not being dealt with in a</p> <p>23 very satisfactory manner. And so I would</p>

<p style="text-align: right;">Page 89</p> <p>1 see that there be an unlimited amount of 2 opportunity for any citizen group, any 3 individual, to continue to come up here 4 until their situation is, you know, 5 sufficiently dealt with. And so, yeah, 6 it might be -- you know, maybe it's 7 limiting in time if you have a community 8 come, next time the community is still 9 coming, but to me, there's a need for the 10 community to come. They wouldn't be 11 coming up here and addressing and driving 12 miles out of the way and leaving family 13 members if there wasn't an issue that 14 needed to be addressed. And to be able 15 to then go back home and not have the 16 Commission follow back up, to be able to 17 say, Well, thank you for coming in, thank 18 you for taking time out of your day to 19 address these complaints, we have 20 followed up on these matters with our 21 Department. I mean, can we have that? I 22 mean, that should be -- 23 COMMITTEE CHAIRMAN PHILLIPS:</p>	<p style="text-align: right;">Page 91</p> <p>1 that answer is not a very satisfactory 2 answer to people, but it happens to be 3 the correct answer. And for people to 4 not like the answer and keep coming is 5 not as productive as it might be. 6 COMMITTEE CHAIRMAN PHILLIPS: 7 Before anybody jumps in -- because I see 8 hands everywhere -- remember the purpose 9 of the meeting today. 10 MR. LeFLEUR: And I'm sorry. I 11 was out of line. 12 COMMITTEE CHAIRMAN PHILLIPS: The 13 purpose of the meeting today is for you 14 to share with this Committee what you 15 believe would be better. We're not going 16 to make a decision today. I said that 17 when I began the meeting. I want to hear 18 everything, though. It's more -- I heard 19 resolution. I got it. But I'm not 20 really going to take the time to debate 21 the issue of Uniontown other than an 22 example of what we could do differently 23 that would make our public-comment</p>
<p style="text-align: right;">Page 90</p> <p>1 That's what I asked. What should we 2 have? 3 MR. JOHNSTON: That should be the 4 least. You know, we should at least have 5 that. 6 COMMITTEE CHAIRMAN PHILLIPS: So 7 what's the most? I mean, you're giving 8 me the least. What's the most? 9 MS. SHAEFFER: Final resolution. 10 Solve the problem. 11 MR. LeFLEUR: If I might, I -- 12 Uniontown is a special problem that's 13 come up time after time. 14 MS. SHAEFFER: Well, why has it? 15 MR. LeFLEUR: And there seems to 16 be some miscommunication. The people 17 responsible for correcting the problem is 18 not ADEM. It's the elected officials in 19 Uniontown. And to continually bring the 20 problem to ADEM to solve is -- you're 21 asking the Department to do something 22 that is not within its authority to do. 23 Now, we work with people. And sometimes</p>	<p style="text-align: right;">Page 92</p> <p>1 sessions better. So with that said, who 2 wants to talk? 3 MS. CALHOUN: I do again. 4 COMMITTEE CHAIRMAN PHILLIPS: 5 Yes, ma'am. 6 MS. CALHOUN: Look, I just want 7 to ask a -- when you're in a violation 8 and then you can't afford to fix it and 9 then a violation continue and continue 10 and continue and you never have the money 11 to fix it, what do the ADEM do? I mean, 12 you know, like for say -- I'm just using 13 this for example, which we have a 14 problem. But how do you -- you know, 15 you're in the violation and it keeps 16 flowing. If you don't have the money to 17 fix it, so how far do ADEM allow to keep 18 going and going and going? Because it's 19 not going to get correct for a long, 20 long, long time. 21 COMMITTEE CHAIRMAN PHILLIPS: 22 Well, once again, I'm not solving 23 Uniontown's issues today. That's not the</p>

<p style="text-align: right;">Page 93</p> <p>1 purpose of this meeting. 2 MS. CALHOUN: I'm not -- okay. 3 COMMITTEE CHAIRMAN PHILLIPS: But 4 what I will say -- 5 MR. LeFLEUR: Perhaps you and I 6 can talk after the meeting. 7 COMMITTEE CHAIRMAN PHILLIPS: But 8 what I will say is this. I know that the 9 Department has gone above and beyond 10 spending time to try to help in every way 11 that they can. And we can say, Well, the 12 answer is it keeps having violations. 13 We'll just stop it. That doesn't help 14 anybody if the toilet's backed up in the 15 houses, because then we'll just get the 16 complaint that the toilets are backing up 17 and it's because ADEM shut down whatever 18 solution may be there. 19 What I'm trying to get to relative 20 to public comment is probably more 21 touched by what the Director said, is 22 there are going to be times -- we all 23 experience this in life -- that we're</p>	<p style="text-align: right;">Page 95</p> <p>1 working with people on Uniontown; 2 correct? 3 MR. LeFLEUR: Oh, yes. 4 COMMITTEE CHAIRMAN PHILLIPS: 5 Trying to get to that resolution that 6 you're talking about. I mean, if they 7 weren't showing up and doing anything, 8 then I would say that's a different issue 9 than if they're trying to get to a 10 resolution. Well, I mean, maybe so. But 11 unless they're -- unless they're doing 12 something that we need to know that's -- 13 they're able to do and they're not doing, 14 I don't know how else to help you with 15 that solution other than what they're 16 doing. 17 MS. LOWRY: I think that one 18 thing that could get to that -- and I can 19 even switch to another example that Mitch 20 brought up today of -- well, first let me 21 say, one thing the Commission could do in 22 situations like that -- it's not going to 23 remedy because that is a difficult --</p>
<p style="text-align: right;">Page 94</p> <p>1 going to hear something that we don't 2 necessarily agree with or like. And if 3 part of the resolution -- what I want to 4 be clear about when you say get it to a 5 resolution or get it -- you know, action, 6 I think, I heard from you, is within the 7 framework of the law that we have to 8 operate under. And we as Commissioners 9 are bound by rules and regulations and 10 laws and authorities that we have. When 11 we use them as best we can to get to a 12 point and it still doesn't make the 13 person giving us a public comment 14 satisfied -- because I kept hearing the 15 word we want to be satisfied -- it may be 16 that that's just where it is. We may not 17 be able to get everyone to the point of 18 being satisfied. What I'm trying to do 19 in this Rulemaking Committee, though, is 20 to understand what we can do within our 21 rules and regulations to get as close as 22 we can or at least to move action. 23 I think the Department's still</p>	<p style="text-align: right;">Page 96</p> <p>1 that particular issue and many of those 2 around the state are difficult and can't 3 be remedied immediately by the 4 Commission. But one thing the Commission 5 could contribute to -- to working toward 6 the solution on is brainstorming and -- 7 with the citizens or just with yourselves 8 in developing -- looking back at the 9 record and seeing are there policies that 10 can be changed that may have prevented 11 this from happening. 12 COMMITTEE CHAIRMAN PHILLIPS: 13 Lessons learned? 14 MS. LOWRY: Yeah. Another 15 example would be the permitting 16 situation, discharge permits on the coal- 17 ash ponds that have been administratively 18 renewed for sometimes eight, nine years. 19 Oftentimes we get those permits -- we're 20 not going to bring those up for renewal 21 because there's federal regulations 22 pending. But in this case, the federal 23 regulation's been pending for years, you</p>

<p style="text-align: right;">Page 97</p> <p>1 know, seven, eight years, so let's go 2 ahead and renew permits when we should 3 and not wait just -- now we want you to 4 wait because it's September, so might as 5 well just wait. But, you know, you see 6 what I'm saying. 7 COMMITTEE CHAIRMAN PHILLIPS: I 8 get the point. 9 MS. LOWRY: There's policies that 10 can prevent things. You know, sometimes 11 we get so far down a road of a huge mess 12 like what's happened in Uniontown that we 13 don't -- we can't even see the solution. 14 But oftentimes the solution is going back 15 and looking at what could have prevented 16 it to start with. And maybe that is a 17 Commission thing. Maybe it's not. 18 COMMITTEE CHAIRMAN PHILLIPS: 19 Nelson? 20 MR. BROOKE: I mean, I think 21 we're kind of batting around what's 22 appropriate to come before you and what 23 isn't, but also the efficacy of what does</p>	<p style="text-align: right;">Page 99</p> <p>1 So I think the key word there is 2 "resolution." When I get done with a 3 presentation, if you give the Director 4 the opportunity to stand up and tell you 5 that I am misinformed and disingenuous 6 and that what I have said is misleading 7 and that's the resolution that I have for 8 bringing something before you, it's 9 incredibly unprofessional and it's going 10 to leave me thinking, Wow, something's 11 messed up here and I may need to keep 12 pressing as a citizen that's acting on 13 behalf of thousands of people and their 14 best interest of public health until we 15 get a thoughtful resolution. 16 So in the term of this situation, 17 it's pretty hard not to talk about what 18 we're talking about because that's why we 19 keep coming back. And Uniontown, if he's 20 given the chance to tell you you're 21 supposed to hold him accountable that 22 what I said is untrue and ADEM's doing 23 everything above and beyond their power</p>
<p style="text-align: right;">Page 98</p> <p>1 come before you and how it's dealt with. 2 So obviously I get having rules around 3 what you should and shouldn't hear and 4 you should just be able to tell people 5 upfront we're not going to hear that 6 because that's not relevant and here's 7 why or come on down. 8 In terms of, you know, continuing to 9 have people come back, that's obviously a 10 symptom of a situation that people don't 11 feel like it's being dealt with. I think 12 the process during the meeting has a lot 13 to do with that. So if you come down 14 with the understanding that you're going 15 to be heard, only to feel like at the end 16 of that what you have said has been 17 either discounted or slapped back in your 18 face in an unprofessional way, then 19 you're going to go home feeling like, 20 well, maybe I didn't get my point across. 21 I have to keep trying and I'm going to 22 keep coming back until I get a thoughtful 23 resolution.</p>	<p style="text-align: right;">Page 100</p> <p>1 to address it and that I must be 2 misinformed, then you're not giving 3 yourself as the oversight entity the 4 opportunity to hear the whole truth. So 5 if he gets a rebuttal, I get a rebuttal. 6 All right. So if ADEM has done 7 everything in their power, then why is it 8 that ADEM is not upholding the law and 9 the rules set out in actual permits as 10 written and saying that they are? I'm 11 going to keep coming back and saying this 12 is not happening until I see it happen. 13 And if we want to get literal about it, 14 it's adequate public notification to the 15 public that ongoing many thousands or 16 millions of gallons of raw sewage are 17 being spilled in creeks, through people's 18 property, in their yards, their livestock 19 are in it on a daily basis and an 20 outright refusal by your agency to force 21 Uniontown to adequately notify the 22 public. 23 MR. LeFLEUR: I have -- I have to</p>

<p style="text-align: right;">Page 101</p> <p>1 object, Commissioner. Refusal of the 2 agency. We're getting into something 3 that has been an issue for quite some 4 time, and I don't think this is the 5 proper forum to address that. 6 COMMITTEE CHAIRMAN PHILLIPS: And 7 I've said that at least three times and 8 we're continuing to go down this as a 9 public meeting on Uniontown. 10 MR. BROOKE: Y'all brought it up. 11 But the point is, is that -- 12 COMMITTEE CHAIRMAN PHILLIPS: I 13 don't believe I brought it up. 14 MR. BROOKE: Well, I mean, he's 15 sitting at the table with you. 16 COMMITTEE CHAIRMAN PHILLIPS: I 17 said I didn't bring it up. I brought up 18 that we aren't here to resolve a 19 Uniontown issue. We're here to talk 20 about public comment. 21 MR. BROOKE: I don't want to 22 resolve the issue here, but we're talking 23 about the idea of us coming before y'all</p>	<p style="text-align: right;">Page 103</p> <p>1 getting back, I understand that. 2 MR. BROOKE: Okay. 3 COMMITTEE CHAIRMAN PHILLIPS: I 4 got that. 5 MR. BROOKE: Cool. 6 MS. DILLARD: And I think 7 certainly that is one of the most 8 important objectives of public comment, 9 is getting action or satisfactory 10 resolution. But I think you're selling 11 public-comment opportunity short if 12 that's all that you look at, because you- 13 all are the commission that oversees our 14 state environmental agency and you make 15 state environmental policy. 16 Another important purpose of these 17 public presentations is to share 18 information and to educate the public 19 about important issues, and this is the 20 very forum I think to do that. Another 21 important part of it is to provide you 22 with information you need to do your job, 23 whether it's oversight of the Director</p>
<p style="text-align: right;">Page 102</p> <p>1 and providing y'all with comments and -- 2 COMMITTEE CHAIRMAN PHILLIPS: So 3 you want to be provocative with the 4 Uniontown issue to get him then to come 5 back and rebut with you. 6 MR. BROOKE: I don't. 7 COMMITTEE CHAIRMAN PHILLIPS: So 8 I'm asking you to either put it in place 9 with the public comment on what we can do 10 differently to make it better or don't 11 talk about it. 12 MR. BROOKE: That's what I'm 13 trying to do. So if y'all are concerned, 14 No. 6, about groups coming back 15 repeatedly, what I'm trying to say is, is 16 that we're going to keep coming back if 17 we feel like we're -- 18 COMMITTEE CHAIRMAN PHILLIPS: And 19 I heard that loud and clear, but then you 20 added all of the Uniontown words that you 21 wanted to get directed to him into that. 22 So if the answer is help us get to a 23 satisfactory resolution and we won't keep</p>	<p style="text-align: right;">Page 104</p> <p>1 or, you know, other aspects of your job. 2 Another important role of the public 3 comment process in my eyes is the 4 ability -- and it is the fundamental 5 ability that our country affords us -- to 6 petition our government for redress of 7 grievances. And obviously not to use 8 Uniontown as an example, but the ability 9 for those folks to come directly to you 10 and make those grievances known is a very 11 healthy kind of process. 12 Finally, it affords a check and a 13 balance because, you know, every EMC 14 meeting starts the same way. First you 15 consider and you vote on your minutes and 16 then you have the Director's report which 17 is very constructive and I learn and you 18 learn about what's going on at ADEM and 19 what the priorities are and what's coming 20 up on the horizon that the agency is 21 going to have to address. But it's a 22 little bit about like that parable that 23 everybody's familiar with, six blind men,</p>

<p>Page 105</p> <p>1 you know, who all feel a part of an 2 elephant and then they come together and 3 they have a violent disagreement as to 4 what an elephant really looks like 5 because they've all just had one part of 6 the elephant. 7 If you just rely on your very 8 capable agency or your Director who 9 reports directly to you, you are going to 10 get very valuable and important 11 information. And it's also going to be 12 accurate information in many respects but 13 it also is one subjective viewpoint. And 14 if you really want to be able to 15 understand as a Commission that entire 16 elephant, my hope and expectation would 17 be you would want to hear from the public 18 in a fairly meaningful and robust way in 19 a process that, again, makes the most of 20 your time and the idea that you-all 21 basically do this not for the glory or 22 for the money or anything else but you do 23 it as a public service.</p>	<p>Page 107</p> <p>1 some of those decisions and some of those 2 actions I hope is -- is worth the 3 occasional foray into off-topic 4 conversations or other things. I hope 5 that whatever you come back with will be 6 a robust public participation opportunity 7 that, as Mitch said at the very 8 beginning, makes it easy for people to 9 come to you as opposed to more difficult. 10 MS. STOKES: Yes. With that 11 said, the technicalities of Consideration 12 No. 6, when you talk about the Commission 13 needs -- we have some concerns that when 14 you say people cannot address the 15 Commission on the same topic more than 16 once in a short amount of time except 17 under special circumstances, it's just 18 very -- there's a huge potential for 19 abuse, because what is exactly the same 20 topic? You know, sometimes you have an 21 expert on a specific topic that may need 22 to come to you at the same time or two 23 months later to tell you an update to</p>
<p>Page 106</p> <p>1 And I certainly recognize that. But 2 you have to make some important, you 3 know, balancing acts about how important 4 is this opportunity, how important is 5 this process, how integral is it to the 6 job you do, and is it worth it to you to 7 sometimes take on a presentation that may 8 not be relevant or it may not be 9 something that you can directly go out 10 and have that action or resolution but is 11 there another important role that it 12 plays, whether it's providing information 13 or just giving citizens an opportunity to 14 come to you and share with you a problem 15 that may educate you about important 16 issues in this state. 17 And, again, if you're going to do 18 your -- your job, which is to oversee our 19 state environmental agency and make 20 environmental policy, both of which are 21 extraordinarily important, being able to 22 ground truth that information by hearing 23 from people who are directly affected by</p>	<p>Page 108</p> <p>1 give you that more information. That 2 person may be the person that is the 3 person that knows the most about that 4 issue. So I would just caution you on 5 how you, you know, how you write that 6 rule, especially keeping in mind that 7 some people may need to come on the exact 8 same topic, on the exact same thing. 9 Also, another technicality would be 10 the -- we haven't touched on the 11 PowerPoint, addressing that, seven days 12 in advance, having to present that seven 13 days in advance. And I think 14 Commissioner Richardson has said that he 15 supports the idea of allowing or 16 submitting a manuscript as well as the 17 PowerPoint seven days in advance, and I 18 think that's going to be very burdensome 19 for people to write out exactly what 20 they're going to say, no edits can -- you 21 know, part of the rule is no edits can be 22 part of it. This is Consideration No. 7, 23 changes cannot be made to the</p>

<p style="text-align: right;">Page 109</p> <p>1 presentation following the submission, 2 and I think that's hard for anybody to 3 stay on script with a presentation. And 4 it's certainly hard to write out exactly 5 everything you're going to say, so we 6 just request that just generally you 7 give -- the 14 days in advance, give the 8 topic. And there's really no need to add 9 in seven days prior that you give a 10 PowerPoint, that you give a manuscript. 11 That's just an added -- thank you. 12 MS. DILLARD: Just very briefly. 13 And Robert can advise you on this ably. 14 There are also First Amendment issues, I 15 think, in requiring, you know, ahead of 16 time, you know, certain aspects of a 17 presentation. And if you go too far down 18 that road, there's some issues there that 19 you will want to address with your 20 counsel. 21 COMMITTEE CHAIRMAN PHILLIPS: Go 22 ahead, Beth. 23 MS. STEWART: I just want to</p>	<p style="text-align: right;">Page 111</p> <p>1 current information in necessarily. And 2 I think it simply would be burdensome to 3 many people to have to provide it in 4 advance in either manuscript or 5 PowerPoint form. That's simply not the 6 way some people communicate most 7 effectively. So it does feel like an 8 abridgment of rights of being able to 9 speak openly with you. And we really 10 would like to see that not followed and 11 not included in the rule. 12 COMMITTEE CHAIRMAN PHILLIPS: 13 That being? 14 MS. STEWART: The requirement 15 that you have to have some sort of a 16 presentation of a manuscript or a 17 PowerPoint or something seven days in 18 advance. I can understand the 14-days- 19 in-advance basic criteria. And we really 20 like the idea that Cindy raised earlier 21 about why not and would it make it easier 22 for you if you had a downloadable form 23 that either -- that could be</p>
<p style="text-align: right;">Page 110</p> <p>1 really support that and ask that you not 2 make that requirement. I agree with 3 Mitch it can be reasonable to ask for a 4 PowerPoint to be provided some short 5 period of time in advance simply to allow 6 that to be loaded so that the meeting is 7 moving along swiftly; but to require 8 that, it just -- it feels like -- it 9 feels to the public like a potential 10 for -- for censorship based on what is 11 intended to be said. And it also -- and 12 I don't believe that that's what the 13 Commission wishes to convey about your 14 process at all. It seems that if a topic 15 meets the criteria, then it meets the 16 criteria. And it may be a moving issue; 17 it may be that more information is 18 available prior to the meeting and after 19 some seven-day-in-advance-required- 20 deadline and that that additional 21 information would be valuable for the 22 Commission to have. And the way this is 23 written, you would not be able to have</p>	<p style="text-align: right;">Page 112</p> <p>1 electronically submitted or otherwise 2 that has a set of questions and those 3 standard set of questions are answered 4 and that is your basic criteria. And we 5 all know exactly what information you 6 need in advance. And then if it's Debi 7 that's making that determination or 8 whoever it is that's screening that, 9 there it is. It's clear how that is 10 screened according to the responses to 11 your questions. And then there's greater 12 clarity to that. 13 COMMITTEE CHAIRMAN PHILLIPS: I'm 14 going to speak once again for me. The 15 intent of a document coming before the 16 Commission probably came -- evolved from 17 the whole issue of people were always 18 making presentations to us and our desire 19 to at least be engaged and prepared for 20 what we were going to hear so that we 21 weren't just sitting there listening and 22 really having no idea -- I mean, we were 23 kind of getting it first time, because I</p>

<p style="text-align: right;">Page 113</p> <p>1 think our perception was people expected 2 us to engage or respond then. What 3 I'm -- what I've heard today, this 4 afternoon, is that that's not as big of 5 an urgency as we probably perceived that 6 it was, and so there may be other ways to 7 manage that.</p> <p>8 MS. STEWART: And if I may add, I 9 think that the way that has actually 10 played out most frequently feels to us -- 11 it was mentioned earlier -- like there 12 has been a prebuttal prepared, and it -- 13 and I don't believe this is your intent, 14 but it comes across to the public that 15 folks have made the effort to come and 16 present information and they're being 17 slapped down. That's what it feels like. 18 It feels defensive and it feels that the 19 Department is giving the message we're 20 rejecting what you have to say. That's 21 how it's felt. And I'm sure that's not 22 how it's meant, but that's how it comes 23 across.</p>	<p style="text-align: right;">Page 115</p> <p>1 there, Failing to do so will result in 2 default denial of request. And I think 3 that's a real red flag for us. I think 4 you can certainly put in those checks and 5 balances to satisfy your needs to know 6 what people are going to be presenting at 7 the meeting, you know, and I think you 8 can do that with some sort of checklist 9 process.</p> <p>10 The other thing I wanted to comment 11 on was just the same thing that people 12 were talking about earlier about 13 commenting more than once on the same 14 topic. And I think it's important for 15 the Commission, I mean, one -- as part of 16 fulfilling your duties, you need as much 17 information as possible. And I think 18 when certain issues are not getting 19 addressed or there is no change, that's 20 information you need. And so if somebody 21 is presenting the same topic but there 22 may not have been a lot of change on that 23 issue, that's something the Commission</p>
<p style="text-align: right;">Page 114</p> <p>1 COMMITTEE CHAIRMAN PHILLIPS: 2 Yes.</p> <p>3 MR. JOHNSTON: Keith Johnston 4 with the Southern Environmental Law 5 Center. Just to sort of dovetail onto 6 some of what was being said, and 7 addressing No. 8, I think, was the one 8 they were addressing about the 9 presentations. I think you guys have 10 said that almost anyone can sort of make 11 that decision about presentation if it 12 falls within the parameters. And I think 13 you could almost have, like, a checklist 14 of, you know, does this have a certain -- 15 does it concern a certain issue, will you 16 have a PowerPoint presentation or 17 something like that -- just a general 18 description maybe of what you are doing 19 and what your intent is to give you guys 20 a full notice and understanding of what 21 people are going to come up and present 22 to you. I think one of the problems we 23 had with No. 8 was the second sentence</p>	<p style="text-align: right;">Page 116</p> <p>1 needs to know about. So I think in 2 considering 6, I hope you consider that 3 as well when you sort of hear some of 4 these reoccurring themes.</p> <p>5 COMMITTEE CHAIRMAN PHILLIPS: 6 Thank you. That's good. I think -- I 7 should have probably said this at the 8 beginning, but the areas that you see 9 there are not things that we have 10 presupposed our answers. They're not -- 11 they are areas that have come up either 12 from Commission members or members of the 13 public that seem to be the only real 14 issues that we continually hear about 15 around public comment. And so the real 16 desire was to get your sense, the room's 17 sense, on those items. So it's helpful 18 that you're kind of referencing to ones 19 that we listed. But those are not 20 predisposed answers by any stretch of the 21 imagination, so just be aware of that. 22 It's -- if nothing else, it was the hot 23 topics that were sure to generate</p>

<p style="text-align: right;">Page 117</p> <p>1 dialogue.</p> <p>2 MR. REID: The question of what</p> <p>3 the answer should be, what we expect of</p> <p>4 the Commission, I think, is -- I mean, it</p> <p>5 probably is the most pressing and burning</p> <p>6 question. You give a presentation and</p> <p>7 then it -- you're actively looking to see</p> <p>8 how much interest is displayed. And it</p> <p>9 would certainly be great to say, Well,</p> <p>10 let's -- let's form a special committee</p> <p>11 to take this on and study this right</p> <p>12 there, but that's really not what I'm</p> <p>13 expecting from --</p> <p>14 COMMITTEE CHAIRMAN PHILLIPS:</p> <p>15 Although we have done that in the past.</p> <p>16 MR. REID: And I think that</p> <p>17 this -- I think that the example of this</p> <p>18 sort of working group and that -- I'm</p> <p>19 thinking of the -- the air toxic work</p> <p>20 that was done in the past. That was a</p> <p>21 situation where something was brought in</p> <p>22 and then it resulted in a very deliberate</p> <p>23 process of addressing an issue. And</p>	<p style="text-align: right;">Page 119</p> <p>1 my manuscript two weeks in advance or</p> <p>2 seven days in advance, then really I</p> <p>3 should just stand up and say do you have</p> <p>4 any questions. But since I'm giving a</p> <p>5 presentation, there is an infinite amount</p> <p>6 of time relatively going forward for the</p> <p>7 Commission to work on this issue.</p> <p>8 So I've given a presentation, coal</p> <p>9 ash being an example today. There's</p> <p>10 Rulemaking coming up. EPA's going to do</p> <p>11 something in February, they're going to</p> <p>12 do something maybe in September. This is</p> <p>13 now the chance for a conversation to</p> <p>14 occur going off into the next year or</p> <p>15 more. That was the point of the</p> <p>16 presentation. Not that I would get an</p> <p>17 answer today on this is what we're going</p> <p>18 to do about coal ash and not for the</p> <p>19 Director or anybody else to say, Well,</p> <p>20 here's what the -- here's what the world</p> <p>21 looks like to us and for it to become a</p> <p>22 debate. I do think that it gets tedious</p> <p>23 when it -- because then I'm -- you know,</p>
<p style="text-align: right;">Page 118</p> <p>1 that's -- that is fantastic, but it is</p> <p>2 also probably not what I am expecting</p> <p>3 with every presentation. So I don't</p> <p>4 necessarily have an answer to what the</p> <p>5 answer should be to a presentation. I do</p> <p>6 like the idea of a response when -- when</p> <p>7 the Chair or when the Commission says,</p> <p>8 This is something we want to take on and</p> <p>9 we've talked about it or a discussion,</p> <p>10 you know, deliberation by the Commission</p> <p>11 saying, Let's look into this some more,</p> <p>12 and then action taken. I don't think</p> <p>13 that that needs to be written into the</p> <p>14 rules, but it is always helpful to see</p> <p>15 deliberation in action.</p> <p>16 But the -- what I see the</p> <p>17 presentation being, a public comment,</p> <p>18 whether it's someone signing up at the</p> <p>19 door or coming in with a premade</p> <p>20 presentation, is the start of a</p> <p>21 conversation or the continuance of a</p> <p>22 conversation if things are not going on.</p> <p>23 But it goes to the idea of if I submitted</p>	<p style="text-align: right;">Page 120</p> <p>1 that just seems like, Well, I've got to</p> <p>2 come back to say something else, and</p> <p>3 that's probably unnecessary.</p> <p>4 So my just gut feeling is that the</p> <p>5 presentation at the meeting becomes the</p> <p>6 entrée into the followup. And if we</p> <p>7 don't hear from you again and things</p> <p>8 still occur, then we would request to</p> <p>9 come back and -- and, you know, it would</p> <p>10 always be within our best interest, I</p> <p>11 think -- and I don't think you need to</p> <p>12 write this as a rule -- but in our best</p> <p>13 interest to say, Here's the next steps or</p> <p>14 here's what we want you to do, because</p> <p>15 then that would tell you what we want.</p> <p>16 But I don't know how you write that into</p> <p>17 a rule that says you've got to tell us</p> <p>18 what to vote on. But, anyway, that's</p> <p>19 my -- my sense, is that it starts --</p> <p>20 COMMITTEE CHAIRMAN PHILLIPS: I</p> <p>21 think we have a rulemaking process for</p> <p>22 that.</p> <p>23 MR. REID: Sure. Right. I mean,</p>

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1 we can always do a petition for
2 rulemaking.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 That's helpful.
5 MR. MULLEN: I think that applies
6 not just to presentations but also the
7 correspondence. If you want us to do
8 more written correspondence, some kind of
9 feedback -- we're considering it; if
10 there's an answer, an answer; if there's
11 not, here's what we're planning on doing
12 with it; the Director's the one you ought
13 to be talking with, or staff, instead of
14 us. Almost a menu of things there. And
15 then, very importantly, if there's a
16 suggestion from the Commission how the
17 individual or group can be productively
18 involved, you know, what that individual
19 or group can do to be productively
20 involved and then how can we all
21 cooperate and solve it, you know, whether
22 it's a committee meeting or whatever.
23 Just more -- just more give and take

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1 after a presentation or correspondence.
2
3 COMMITTEE CHAIRMAN PHILLIPS: I
4 think the one thing that I'm hearing --
5 and I think Eva said this in some form --
6 I think too many times there's the
7 expectation that there is an answer, that
8 every presentation is for one purpose,
9 and we know that it's not. I mean, we
10 know that sometimes people want to
11 educate us or at least share information
12 with us for us to consider future policy
13 or future regulations that may be coming,
14 for example. But in other instances,
15 it's because they feel like something
16 hasn't been -- has not been done to meet
17 their expectations. And then other times
18 it's -- they're -- I mean, we rarely get
19 what I would call happy news, but that's
20 okay. Occasionally, we do. We have
21 someone come and talk and say, you know,
22 this happened but, you know, I still
23 think the Department did a good job with

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1 this. So there are different reasons we
2 know that the public come to us.
3 I think in the past, though, we've
4 tried to fit -- fit everything into one
5 box, what one means for someone to come
6 and make public comment to us. And, once
7 again, I'm sharing my view, not the
8 Commission's view. And I think this has
9 helped us. And I mentioned in the last
10 meeting that by far the public comment
11 that came back relative to us looking for
12 improvements was don't do away with
13 public comment, and that was never our
14 intent, to do away with public comment.
15 It was to make it better. And not make
16 it better just for the public but to make
17 it better for the Commission, because
18 there was frustration growing on the
19 Commission that everything was really
20 kind of stuck in one box and not
21 everything demands a response and why
22 does it always come two weeks before a
23 meeting? Because that's when we say we

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1 accept; right? So we're kind of creating
2 our own issue.
3 And the purpose of this whole
4 session really came out of a dialogue
5 that occurred after a meeting and then we
6 realized that it was after a meeting so
7 we had to wait until the next meeting to
8 set up the meeting we wanted to have. So
9 our intent -- and we know that there are
10 issues. We're all human. We're not
11 perfect. But we're trying to get better
12 at what we do, and the only way we know
13 to get better is to hear from you. You
14 mentioned why does it always have to be
15 about us calling you. Well, that helps
16 us, because it's a complaint and we just
17 can't be everywhere all the time. And so
18 it's helpful to hear your concerns, your
19 issues, and probably more valuable for
20 me, Ms. Merritt, to hear --
21 MS. MERRITT: It's been very,
22 very --
23 COMMITTEE CHAIRMAN PHILLIPS: --

<p style="text-align: right;">Page 125</p> <p>1 perceptions, because many of the 2 perceptions that you have -- you know, we 3 kind of have our own perceptions of why 4 things get brought to us. And so I think 5 it's helpful for us -- for you to share 6 with us your perceptions of why things 7 are done. And they really don't match. 8 But the only way we're ever going to get 9 them closer to matching is to have 10 dialogue like we're having here. 11 Yes, ma'am. 12 MS. CALHOUN: Hi. 13 COMMITTEE CHAIRMAN PHILLIPS: Hi. 14 You're back. And we're glad. 15 MS. CALHOUN: Okay. I'm cool. 16 With the presentation, like you give them 17 so long to respond -- seven, 14 days, 18 because, you know, I don't do those. I'm 19 not with them. But why can't you guys 20 have a deadline with the presentation, 21 you know, well -- or your secretary or 22 whoever, well, I haven't had a chance to 23 get back with John yet. Debi, would you</p>	<p style="text-align: right;">Page 127</p> <p>1 yet. But it most certainly is something 2 that was not lost on us about responding. 3 Beth? 4 MS. STEWART: I really like what 5 was said earlier by Mitch about the way 6 that if the public presentations are a 7 way to either begin a conversation or 8 continue a conversation, well, then, how 9 does that conversation happen? So if 10 we're making a presentation and then the 11 EMC is having to go away because of your, 12 you know, formal setup and talk about it 13 with the Department and in the various 14 ways you're looking into it and then it 15 eventually gets back, there's not really 16 a conversation happening. So if there 17 were some issues in which the EMC were to 18 say, you know, on a policy issue, 19 obviously the Rulemaking Committee, as 20 mentioned earlier, could say, you know, 21 we would like to have a situation like 22 this where we invite conversation and we 23 share perspectives.</p>
<p style="text-align: right;">Page 126</p> <p>1 send him a note that I'm still looking at 2 it, so it won't be on a, you know, Oh, I 3 went and did my presentation today and, 4 okay, they sit up there and looked at me, 5 they did listen, I guess they did. But a 6 response would really kind of ease the -- 7 saying that you're listening or, you 8 know, fooling us or something. 9 COMMITTEE CHAIRMAN PHILLIPS: 10 Well, hopefully we're not going to fool 11 you. Our intent -- I heard loud and 12 clear out of this session today, which I 13 don't even think was one of the items -- 14 maybe it was -- was we really need to do 15 better at responding at what we are 16 thinking about what we heard, even if it 17 means it's going to take time. And it 18 may be months before we really get to 19 dealing with it. We should at least 20 communicate that. And whether we do that 21 in writing or whether we do it at the 22 next meeting where we just revisit what 23 we heard and talk about it, I don't know</p>	<p style="text-align: right;">Page 128</p> <p>1 And I think a difficulty with the 2 requirements on your deliberations is 3 when you're up there and someone's here 4 and they speak for ten minutes and 5 there's not -- that's not a conversation. 6 It's a great way to present information, 7 it's a good conversation opener, but it 8 doesn't let us do what we're doing here, 9 and this has been really, extremely 10 valuable. And if there were ways that 11 you could figure out how to work into 12 your process on those topics brought to 13 you that are of interest and you feel 14 it's worthwhile that there's more 15 communication about it, that there could 16 be -- the followup could include a true 17 conversation. 18 MR. GLENN: And I'll -- 19 personally I'll close here because I'm 20 fixing to get a winter advisory up around 21 I-20, so I'm fixing to cut out. 22 MS. LOWRY: There have been a lot 23 of weather things pop up.</p>

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1 MR. GLENN: Yeah, they're popping
2 up. But, number one, thank y'all for
3 having this meeting. And on behalf of a
4 lot of industry representatives, again,
5 clarity of communications is important,
6 whether they're communications that our
7 members want to have with you as the
8 policy-setting body, either something we
9 like that's going on, don't like is going
10 on, wish you would do faster or slower or
11 whatever the situation may be. And, you
12 know, I like the idea of the clarity of
13 some kind of communication. I like the
14 idea of written communications. I like
15 the idea before the meeting, too. I
16 mean, get stuff in a couple weeks before
17 or whatever, give y'all time to think
18 about it. You've got places in your
19 agenda where you can stop and talk about
20 it. And if you need information from
21 somebody, I think you can ask for that in
22 a meeting. I think you can do that any
23 time you want to do that.

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1 COMMITTEE CHAIRMAN PHILLIPS: I
2 assume you mean at the other business?
3 MR. GLENN: Yeah. Exactly. Or
4 time to add stuff to the agenda or maybe
5 ask for information and collect stuff in
6 advance. You can always add it to your
7 agenda. There's time limits on all that,
8 I know. But just a big fan of written
9 communication for clarity, because unlike
10 Christmas morning, not everybody likes
11 surprises all the time. So we walk into
12 a meeting and all of a sudden an issue or
13 a member of ours is under attack, if you
14 will, either directly or indirectly, it's
15 nice to know that so we can prepare for
16 that and what that brings with it.
17 Again, thank y'all for having this
18 conversation.
19 COMMITTEE CHAIRMAN PHILLIPS:
20 Thank you, sir, for those comments.
21 Because I heard the weather comment, I'll
22 ask, have we covered -- I mean, I know we
23 covered the items that were put in the

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1 notice, but have we covered the things
2 that -- I guess we did not cover that. I
3 think someone mentioned it earlier about
4 what we could or could not hear and the
5 issue of the Commission hearing things
6 when there's pending or ongoing
7 litigation is something that we'll
8 continue to have an issue, that we can't
9 hear those things. We know, and I've
10 heard people say, Yeah, but there are --
11 just because it's about that topic
12 doesn't mean that you shouldn't be able
13 to listen to that from the standpoint of
14 an environmental policy.
15 And that may be true, but we still
16 have to gauge it when it comes in.
17 That's part of the reason that we ask
18 what are you going to talk about, who are
19 you going to talk about, because in our
20 early days, we did have a lot of people
21 that would come up and just really go to
22 town and then we'd find out a month later
23 that we were -- there was litigation

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1 pending. And so we really have to be
2 careful with that. So we would ask for
3 your understanding at least in that
4 arena. Thanks for reminding me of that,
5 Robert.
6 But is there anything else that's on
7 your mind that would be valuable for us,
8 and then I'll let Ms. Merritt make a
9 closing statement.
10 MR. JOHNSTON: This is Keith
11 Johnston with Southern Environmental Law
12 Center. Just on that point, I would make
13 sure that when you interpret that rule
14 and that responsibility -- and I
15 understand it and certainly respect
16 that -- that you do it in a narrow
17 fashion so you're not being too broad in
18 that interpretation. I think you have
19 counsel at these meetings. You know, you
20 can certainly -- you can cut that off if
21 need be. So I think there's a couple of
22 safeguards there that can really --
23 COMMITTEE CHAIRMAN PHILLIPS: And

<p style="text-align: right;">Page 133</p> <p>1 we will defer to our counsel. 2 MR. JOHNSTON: -- help you there 3 and just making sure that you're not, you 4 know, going too broad in that 5 interpretation if it's just hitting on an 6 issue that you may have before the 7 Director. 8 COMMITTEE CHAIRMAN PHILLIPS: 9 Well, we do depend on our counsel. 10 MR. TAMBLING: And, Keith -- this 11 is Robert Tambling. I'm sure all the 12 lawyers here can appreciate they don't 13 want their clients who are involved in 14 litigation to publicly discuss any facet 15 of that litigation. As the oversight 16 body for the Department, I don't think 17 it's appropriate for the Department to 18 engage in any kind of public discussion 19 about litigation or administrative 20 petitions, for instance, at EPA involving 21 the Department. So that's kind of the 22 concern with having a rule like that. 23 That said, when we first drafted the</p>	<p style="text-align: right;">Page 135</p> <p>1 MR. TAMBLING: Would that be 2 narrow enough for you? 3 MR. JOHNSTON: I think it would 4 depend on how the Commission puts that in 5 practice. I think that's the -- 6 MR. TAMBLING: But facially? I 7 mean, is -- 8 MR. JOHNSTON: Yeah. Facially, 9 if it's a matter before the Commission 10 that has two parties, there should be 11 safeguards for those parties to not try 12 to -- 13 MR. TAMBLING: That's the rule 14 right now -- 15 MR. JOHNSTON: Right. 16 MR. TAMBLING: -- but we're 17 talking about expanding it to litigation 18 involving the Department. We really 19 don't want the Commission members 20 discussing any kind of litigation 21 involving the Department. 22 MR. REID: Robert -- 23 MR. TAMBLING: Any matter that is</p>
<p style="text-align: right;">Page 134</p> <p>1 rule many years ago and worked with 2 Dennis Bailey, we were at that time 3 really only concerned about matters that 4 might come before the Commission. But 5 it's been our experience since then that 6 we've had a lot of matters involving ADEM 7 that are under litigation that people 8 want to talk about. We were able to 9 nuance the prohibition by placing that 10 squarely on the Commission where the rule 11 basically discourages the Commission from 12 engaging in the nondeliberative 13 discussion of any matter that might come 14 before them. Well, in the like manner, I 15 think if we did adopt a rule like that, 16 it would be phrased in the same manner. 17 We're not telling the public what they 18 can talk about, what they can't talk 19 about. We're discouraging the Commission 20 from engaging in any kind of discussion 21 involving litigation. 22 COMMITTEE CHAIRMAN PHILLIPS: Is 23 that okay?</p>	<p style="text-align: right;">Page 136</p> <p>1 the subject of litigation involving the 2 Department. 3 MR. REID: If the Department -- 4 if there is something between the 5 Department and the -- 6 COMMITTEE CHAIRMAN PHILLIPS: Go 7 ahead. 8 COMMISSION CHAIRMAN BROWN: 9 They're listening. 10 MR. REID: If it's something 11 between the Department and the EPA, 12 you're saying that the EMC would not then 13 need to have a discussion about that type 14 of subject? 15 MR. TAMBLING: I think if there 16 was something that is the subject matter 17 of a petition involving the Department 18 that is pending at EPA, then I would -- I 19 would advise my client, the Commission, 20 not to engage in any kind of 21 nondeliberative discussion involving that 22 matter publicly. If the matter is 23 resolved, then I think we can talk about</p>

<p style="text-align: right;">Page 137</p> <p>1 it.</p> <p>2 MS. DILLARD: And, Robert, by</p> <p>3 "discussion," do you mean even passively</p> <p>4 listening to a presentation made by a</p> <p>5 member of the public?</p> <p>6 MR. TAMBLING: Well, I mean, I</p> <p>7 don't know if there is such a thing as</p> <p>8 passively listening when you come in</p> <p>9 front of the Commission. I think the</p> <p>10 Commission really wants to be prepared</p> <p>11 and wants to be able to engage you, you</p> <p>12 know, and not just sit there stoically</p> <p>13 and just listen to you. What's the</p> <p>14 purpose of that?</p> <p>15 MS. TROTMAN: I can make a</p> <p>16 comment.</p> <p>17 MR. TAMBLING: Yes.</p> <p>18 MS. TROTMAN: I completely</p> <p>19 understand this, being an attorney. You</p> <p>20 don't want your clients in here</p> <p>21 discussing something that is going</p> <p>22 through litigation, and the main purpose</p> <p>23 is I wouldn't want to subpoena each and</p>	<p style="text-align: right;">Page 139</p> <p>1 to hear what the Department says. Eva</p> <p>2 keeps saying all of the parties having</p> <p>3 their say, and you -- as a lawyer, you</p> <p>4 know, I tell my clients to get off</p> <p>5 Facebook, get off Twitter, get off</p> <p>6 everything, shut down. If you open your</p> <p>7 mouth, we're going to have a problem.</p> <p>8 You don't talk to anybody but me about</p> <p>9 it. And I think that's what Robert is</p> <p>10 saying he would counsel the Department,</p> <p>11 not to speak about it. For us, you know,</p> <p>12 I don't want to sit up here like a bump</p> <p>13 on a log. I don't want to sit up there</p> <p>14 to the effect that you may as well be</p> <p>15 that congressman that nobody's ever heard</p> <p>16 of that's on C-SPAN at ten o'clock at</p> <p>17 night speaking to the empty senate or</p> <p>18 house chamber. And sometimes I feel</p> <p>19 like, you know, I'm just -- I may as well</p> <p>20 be -- have rolled over in bed, cut the TV</p> <p>21 on, and I'm watching because we're not</p> <p>22 engaging the process. We're listening to</p> <p>23 people come, have some comments with no</p>
<p style="text-align: right;">Page 138</p> <p>1 every one of you to come and testify to</p> <p>2 what my client said in court or what the,</p> <p>3 you know, opposing person said in court.</p> <p>4 You just don't want to bring those</p> <p>5 outside. And then, also, you don't want</p> <p>6 to waive any kind of privileges that you</p> <p>7 may have with attorney-client or anything</p> <p>8 like that. And you definitely don't want</p> <p>9 to speak outside what's going on in the</p> <p>10 litigation.</p> <p>11 MR. REID: And I'm just not sure</p> <p>12 that applies --</p> <p>13 MS. TROTMAN: Right.</p> <p>14 MR. REID: -- here with the EMC</p> <p>15 versus the Department. And I think -- if</p> <p>16 I could -- this may be something we could</p> <p>17 table, because I think --</p> <p>18 COMMISSION CHAIRMAN BROWN: I</p> <p>19 think -- I think where it applies is if</p> <p>20 the Department is a party to the</p> <p>21 litigation and somebody wants to kind of</p> <p>22 speak to it, the issue you get is that</p> <p>23 once we hear what you say, we always want</p>	<p style="text-align: right;">Page 140</p> <p>1 discussion about, well, where does it go</p> <p>2 from here, what are you asking us to do,</p> <p>3 what is the point of this. And so it's</p> <p>4 like, hey, thank you for coming, have a</p> <p>5 nice day, you know.</p> <p>6 COMMITTEE CHAIRMAN PHILLIPS: And</p> <p>7 I heard some of you say that's how it</p> <p>8 feels.</p> <p>9 MS. DILLARD: It does.</p> <p>10 COMMISSION CHAIRMAN BROWN:</p> <p>11 Right. And, you know, for us -- and I</p> <p>12 think that's why Commissioner Richardson</p> <p>13 gets -- is passionate about this issue,</p> <p>14 is why I asked the Rulemaking Committee</p> <p>15 to look at it, because, I mean, I just --</p> <p>16 you know, it's like, hey, thank you for</p> <p>17 coming, and that's all we have to say.</p> <p>18 And, you know, if I'm going to sit up</p> <p>19 here and devote my time, you know, almost</p> <p>20 gratuitously -- may as well be -- I want</p> <p>21 to be able to engage the process, for</p> <p>22 there to be a process, to do something.</p> <p>23 And, you know, a lot of times I sit</p>

<p style="text-align: right;">Page 141</p> <p>1 there, I listen to the presentations and 2 it's like, okay, I've heard that before. 3 Yes. 4 And I hate to use the word 5 "Uniontown" again, but -- but, you know, 6 a lot -- I keep up with what's going on, 7 and so -- and I know what's going on and 8 I -- you know, I get reports about what's 9 going on and where the process stands, 10 and so it's like, yes, thank you for 11 coming. And I found sometimes that some 12 of the most productive meetings or 13 conversations have not been up there but 14 in the little room over there. 15 COMMITTEE CHAIRMAN PHILLIPS: 16 Eva, I'll call on you. 17 COMMISSION CHAIRMAN BROWN: I 18 know you've got something to say. 19 MS. DILLARD: I always do. 20 COMMISSION CHAIRMAN BROWN: But, 21 I mean, that's sort of -- you know, and 22 now I'm hearing, I guess, that maybe we 23 don't need to make a response right then.</p>	<p style="text-align: right;">Page 143</p> <p>1 think we can all agree that if a matter 2 is in active litigation that it is not 3 appropriate for discussion. No question. 4 And by the same token, if it's subject to 5 a final order or closed, it obviously is. 6 What I think Keith was touching on and 7 it's a concern that I share -- and Robert 8 and I have had this discussion as well -- 9 is there's a continuum of kind of cases 10 in between that maybe might be 11 appropriate for comment because of the 12 subject matter and the comment wouldn't 13 be directed to the litigation, it would 14 be maybe the underlying problem. So 15 that's my longwinded way of saying 16 there's certain things that it's not 17 appropriate to comment on and there's 18 certain things that there are if there's 19 a continuum in the middle. And what we 20 would respect fully, is when you're 21 looking at that rule, please don't in an 22 overabundance of caution define it so 23 broadly that you're actually going to be</p>
<p style="text-align: right;">Page 142</p> <p>1 And, you know, my feeling is that is 2 completely -- I don't know -- opposite of 3 what I have always thought. You know, 4 I've always looked at it as people come 5 seeking redress of grievances. Well, I'm 6 supposed to do something. And if you 7 come in and tell me that -- that's why I 8 like getting the information beforehand. 9 I want the information. I've gotten a 10 little more proactive recently to where 11 some of the letters that say I'm going to 12 recommend, you know, you for speaking I 13 put in, "but you need to address these 14 points in your presentation." And, you 15 know, maybe by exercising some discretion 16 in that manner, some of these issues can 17 be -- can be addressed. 18 COMMITTEE CHAIRMAN PHILLIPS: I 19 would hope you've seen a difference in 20 the last few meetings. 21 MS. DILLARD: I was actually 22 going to make it easier for you. I know 23 that that's a shock. And that is, I</p>	<p style="text-align: right;">Page 144</p> <p>1 excluding some things that folks should 2 be able to talk about. But it's one of 3 those things the devil's in the details 4 and you're going to have to play around 5 drafting it and we'll let you know. 6 COMMITTEE CHAIRMAN PHILLIPS: 7 Have any suggestions, share. 8 MR. TAMBLING: Absolutely. I'm 9 going to do everything I can, as you 10 would, to protect your client. 11 MS. DILLARD: Right. And that 12 makes sense. 13 MR. JOHNSTON: Yeah. Absolutely. 14 There's no question about that. It's 15 just that interpretation of how far you 16 go in protecting your client when you 17 have maybe Party A against Party B, you 18 know, but you want to discuss an issue in 19 front of the Commission that's a broader 20 issue that goes beyond what those two 21 parties are arguing about. I think 22 that's where -- we just don't want the 23 rule being used to wipe out potential</p>

<p style="text-align: right;">Page 145</p> <p>1 issues that the Commission needs to know 2 about. 3 COMMITTEE CHAIRMAN PHILLIPS: 4 Mitch. 5 MR. REID: That was -- that's it 6 in a nutshell. And we would certainly, 7 if there -- if Robert has concerns about 8 something we're asking to talk about, we 9 would like to at least provide our 10 assertion or justification for why this 11 doesn't meet the bar, it doesn't -- 12 shouldn't be barred by that. The 13 situation I'm thinking about is a 14 situation where the Department is 15 involved in something that the EMC is not 16 and -- and we -- 17 COMMITTEE CHAIRMAN PHILLIPS: I 18 don't want to hear about it, but how can 19 the Department be involved in something 20 that the EMC is not as an oversight body 21 of the Department? 22 MR. REID: A -- 23 COMMITTEE CHAIRMAN PHILLIPS: I</p>	<p style="text-align: right;">Page 147</p> <p>1 guess the issue I have, though, is how 2 can -- if the Department can't talk about 3 it because it's in litigation, how do we 4 consider something related to a 5 litigative matter without being able to 6 hear from the Department on the issue? 7 MR. REID: I -- I would -- I can 8 definitely see this as being a working 9 group session for -- because we can -- I 10 can go through hypotheticals and it would 11 probably require more research than I've 12 got on my phone right now. 13 COMMITTEE CHAIRMAN PHILLIPS: Is 14 there anything else we didn't touch? 15 MS. CALHOUN: I'd like to say one 16 more thing. 17 COMMITTEE CHAIRMAN PHILLIPS: 18 Yes, ma'am. 19 MS. CALHOUN: I enjoyed this, you 20 know. It seems like y'all are not 21 sitting up there, that you're down to the 22 level that we are. And I see y'all have 23 a little heart -- little heart. But</p>
<p style="text-align: right;">Page 146</p> <p>1 don't want to hear specifics of what 2 you're talking about. 3 MR. REID: Sure. A specific 4 situation where the Department is 5 involved in a -- in a dispute with the 6 EPA specifically which is not going to 7 require the oversight or adjudication of 8 the dispute by the EMC, it's not going to 9 come before the EMC as a matter that the 10 EMC is then deciding on. So it is not -- 11 it's not a situation where you would then 12 be sort of predeterminational on an 13 issue. That's -- but I guess you can -- 14 you can probably draw Venn diagrams to 15 where that particular issue would look at 16 something else, but I can draw you a 17 significantly big enough Venn diagram and 18 we can't talk about anything. 19 COMMITTEE CHAIRMAN PHILLIPS: Now 20 we're talking. I'm an engineer. 21 MR. REID: Line diagram. We want 22 lines, not Venns. 23 COMMISSION CHAIRMAN BROWN: I</p>	<p style="text-align: right;">Page 148</p> <p>1 thanks for -- I'm just -- it's just me. 2 I have to laugh sometimes. But it's -- 3 CHAIRMAN PHILLIPS: That's okay. 4 That's some praise, at least. 5 MS. CALHOUN: But, see, it's a 6 learning process. What you tell us, 7 well, don't do this or we don't do that, 8 we don't know that you don't do this or 9 you don't do that. Then you can know 10 what we don't do: We don't go away. 11 COMMITTEE CHAIRMAN PHILLIPS: 12 That's fair. 13 MS. CALHOUN: Thank you. 14 COMMISSION CHAIRMAN BROWN: And I 15 guess I think to me it's always been -- 16 you know, people want to make a lot of 17 times the citizens that aren't involved 18 professionally with the Commission or 19 with the Department, you know, they -- 20 they for some reason come to the 21 Commission first, but going to the 22 Department first I think helps that 23 educational process that you're talking</p>

<p style="text-align: right;">Page 149</p> <p>1 about. And I think that's been a lot of 2 our frustration, is you're coming to us 3 and, you know, well, the permit's either 4 issued or not issued or, you know, the 5 fine has been levied or it's in 6 litigation and there's really nothing we 7 can do except say go down yonder to 8 Director LeFleur's office. And I just 9 feel useless sitting up there in that 10 standpoint. I mean, I don't feel like 11 I'm doing any good for anybody. 12 MS. CALHOUN: We thought y'all 13 was the big dogs. 14 MS. LOWRY: Commissioner, I just 15 wanted to report that Michael Churchman 16 from the Environmental Council was on the 17 phone for a little while. He said he 18 really couldn't hear anything so he just 19 got off. 20 COMMITTEE CHAIRMAN PHILLIPS: 21 Well, that's a good lesson learned on 22 that one. 23 MS. LOWRY: We have that same</p>	<p style="text-align: right;">Page 151</p> <p>1 from you. It will help me make -- I can 2 talk more knowledge on it now with the 3 Committee after seeing -- you know, 4 hearing anybody talk. And, you know, I 5 think this was the best thing that could 6 have ever happened. So thank you so 7 much. 8 COMMITTEE CHAIRMAN PHILLIPS: 9 Well, I want to thank all of you. I want 10 to thank Ms. Merritt and Chairman for 11 sending this to Rulemaking. But I really 12 want to thank those of you in the room -- 13 and you know who you are -- that really 14 helped conceive the concept of us doing 15 what we did today. It's something that's 16 much -- much more valuable, I think, to 17 the Commission, but most certainly more 18 valuable to the Rulemaking Committee to 19 try to put reality and to hear what 20 perceptions are really on both sides 21 of -- of that counter when we're sitting 22 up there. We have this belief that we're 23 having those conversations, but what</p>
<p style="text-align: right;">Page 150</p> <p>1 problem with our board meetings. It's a 2 challenge. 3 COMMITTEE CHAIRMAN PHILLIPS: 4 Well, we want to thank all of you, but 5 before we go, do you want to say anything 6 else, Mr. Chairman? 7 COMMISSION CHAIRMAN BROWN: I 8 can't believe I've stayed as long as I 9 did. 10 COMMITTEE CHAIRMAN PHILLIPS: 11 We're glad you did. 12 COMMISSION CHAIRMAN BROWN: Now 13 I'm late to -- way late to be somewhere 14 else. But I enjoyed it. 15 MS. MERRITT: I just want to say 16 that I've learned a lot today, and I just 17 want to thank our Chairman. You know, I 18 know this came out of conversation after 19 our last meeting, and I've been -- I 20 mean, I've only been on a short time, and 21 this is my -- this Rulemaking Committee, 22 I've been reading. But today has been 23 really a learning -- I've learned a lot</p>	<p style="text-align: right;">Page 152</p> <p>1 we're not doing is letting you know we're 2 having those conversations. So I think 3 it's been very good to hear how it feels 4 from your seats, because many times we, 5 unfortunately, being human, we think 6 about how it felt sitting in our seats. 7 And we juggle that with a whole host of 8 other obligations and commitments just 9 like you do. And I think the more we can 10 talk about how to get to an end point 11 together, the more likely that we'll get 12 there. Most certainly we're not going to 13 get there if we don't talk about it. 14 So I want to thank all of you for 15 your ideas. And then I want to remind 16 you that the process is we'll take all 17 this in, we'll have it in transcript so 18 that you can look at it also. We'll get 19 it to Commissioner Richardson. We'll 20 have our next meeting in April. I 21 encourage you to be there, if you can. 22 If you can't, feel free to send written 23 comments, videos, anything you want to</p>

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1 send. We'd love to hear from you.
2 And -- and I guess the final is be safe
3 on your way from here.
4 MR. LeFLEUR: I would like to
5 invite everybody to come to the meeting
6 between the Department and the
7 environmental community after the April
8 meeting.
9 COMMITTEE CHAIRMAN PHILLIPS:
10 That's right. What time is it?
11 MR. LeFLEUR: At one o'clock.
12 COMMITTEE CHAIRMAN PHILLIPS:
13 Your office?
14 MR. LeFLEUR: Attendance started
15 drifting off, and we'd like to see it
16 jump back up on these meetings. It's an
17 opportunity to address some of these
18 issues that y'all have brought up today.
19 COMMITTEE CHAIRMAN PHILLIPS: I
20 know the Chair has gone to some of those.
21 So I'll commit to go to those if you guys
22 will stay next time and go. We can all
23 see each other again.

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1 MR. JOHNSTON: I'm sorry. Was I
2 under the impression that we were going
3 to have another Rulemaking Committee
4 stakeholder meeting after the EMC at one
5 o'clock or -- in April?
6 COMMITTEE CHAIRMAN PHILLIPS: In
7 April, it's probably at ten. If that
8 changes, we'll let you know. But right
9 now I don't think we're expecting to have
10 another one o'clock session in April.
11 That's not what we had talked about.
12 MS. STOKES: Would you mind
13 e-mailing all of us? I think last time
14 we didn't know whether to RSVP or whether
15 to send in comments. Do you mind sending
16 an e-mail out or is it going to be on
17 your website?
18 COMMITTEE CHAIRMAN PHILLIPS: It
19 will be a notice on our website. But,
20 Debi, you have everybody. They're all on
21 the list, right, the mailing list?
22 MS. THOMAS: Yeah.
23 COMMITTEE CHAIRMAN PHILLIPS: So

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1 we'll get it out to you.
2 MS. STOKES: That will be great.
3 COMMITTEE CHAIRMAN PHILLIPS:
4 Thank you once again and be careful
5 driving home. I need a motion to
6 adjourn.
7 MS. MERRITT: So move.
8 COMMITTEE CHAIRMAN PHILLIPS:
9 Second?
10 MS. MERRITT: Second.
11 COMMITTEE CHAIRMAN PHILLIPS: All
12 in favor?
13 (Unanimous.)
14 (The Rulemaking Committee meeting
15 and work session concluded at
16 3:15 p.m., on February 20, 2015.)
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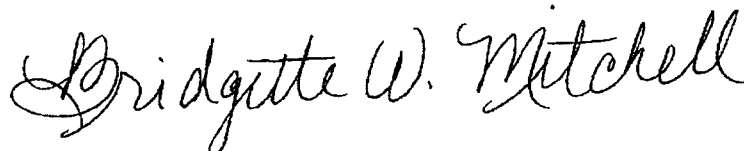
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Part B

Attachment 1

1/21/15

AGENDA*
MEETING AND WORK SESSION OF THE
RULEMAKING COMMITTEE
OF THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

DATE: February 20, 2015

TIME: 1:00 p.m.

LOCATION: Alabama Department of Environmental Management (ADEM) Building
Alabama Room (Main Hearing Room)
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2400

<u>ITEMS</u>	<u>PAGE</u>
1. Consideration of minutes of meeting held on December 12, 2014**	2
2. Rulemaking Committee work session on Division 335-2 ADEM Administrative Code Rule 335-2-3-.05, <u>Agenda</u> , Sections (1) through (3)	2 & Attachment
3. Other business	2
4. Future Rulemaking Committee meeting	2

* The agenda for this meeting and work session and notice for the work session will be available on the ADEM website, www.adem.alabama.gov, under Environmental Management Commission and Public Notices and Permits/EMC Notice of Work Session.

** The minutes of this meeting will be available on the ADEM website under Environmental Management Commission.

Agenda
Rulemaking Committee Meeting and Work Session
Page 2

1. CONSIDERATION OF MINUTES OF MEETING HELD ON DECEMBER 12, 2014
2. RULEMAKING COMMITTEE WORK SESSION ON DIVISION 335-2 ADEM ADMINISTRATIVE CODE
RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)

Attached is a notice that provides details regarding the work session.

3. OTHER BUSINESS
4. FUTURE RULEMAKING COMMITTEE MEETING

ATTACHMENT

**ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION (AEMC)
RULEMAKING COMMITTEE
NOTICE OF WORK SESSION ON DIVISION 335-2 ADEM ADMINISTRATIVE CODE
RULE 335-2-3-.05, AGENDA, SECTIONS (1) THROUGH (3)**

Rule No.	Rule Title
335-2-3-.05, Sections (1) through (3)	Agenda

Notice is hereby given that a work session will be held by the AEMC's Rulemaking Committee under Agenda Item 2 at its meeting on **February 20, 2015, at 1:00 p.m. in the main hearing room at the ADEM – Central Office location at 1400 Coliseum Boulevard in Montgomery**, to conduct an open discussion with interested parties on the Committee's current areas of concern regarding the above Rule as listed below. During the work session, the Committee will hear oral comments from interested parties regarding the Committee's current areas of concern regarding the above Rule and any additional areas of concern regarding the above Rule that they wish to present and discuss with the Committee. **THE PURPOSE OF THIS WORK SESSION IS TO SEEK CONSTRUCTIVE INPUT ON HOW TO IMPROVE THE EXISTING RULE. IT IS NOT THE INTENT OF THE COMMITTEE TO REPEAL THE EXISTING RULE. IT IS THE COMMITTEE'S INTENT TO IMPROVE THE RULE AND IF CHANGES ARE DECIDED TO PRESENT THEM TO THE FULL COMMISSION FOR ITS CONSIDERATION.**

RULEMAKING COMMITTEE'S CURRENT AREAS TO CONSIDER

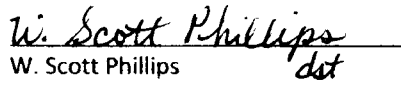
1. E-mail delivery of requests from members of the public to appear before the Commission is currently not allowed in the existing Rule.
2. Requests from members of the public to appear before the Commission are being submitted right at or after the 14 days deadline before the Commission meeting.
3. Public comments should focus on the following areas of Commission responsibility: (1) To select a Director for the Department of Environmental Management and to advise the Director on environmental matters which are within the Department's scope of authority; (2) To establish, adopt, promulgate, modify, repeal and suspend any rules, regulations or environmental standards for the Department which may be applicable to the State as a whole or any of its geographical parts; and (3) To develop environmental policy for the State.
4. A process for encouraging written public comments at all times in order to let Commission know what input is desired.
5. Commissioners should not be predisposed to granting or denying the requests from members of the public to appear before the Commission. The Rule should clarify that the AEMC Chair shall not communicate to the person or persons requesting that their respective request will be "recommended" or "not recommended" for acceptance by the Commission. The Chair should acknowledge receipt and that it will be placed before the Commission for consideration. If the request fails to meet certain criteria required of such a presentation, the Chair should be able to deny the presentation without consultation of the Commission. Person or persons requesting should come prepared to make their presentation.
6. Clarify that no individual, entity, or various representatives of an entity may be granted permission to address the Commission on the same topic more than once in a short amount of time, except under special circumstances.
7. Clarify that before being granted permission to address the Commission, person or persons requesting to appear before the Commission must pursue all reasonable venues made available through the ADEM and its Director for addressing concerns that are subject to the Department's roles and responsibilities. Verifiable evidence of such effort should be presented with request.
8. Clarify that to be granted permission to address the Commission, person or persons requesting must provide presentations (either PowerPoints or manuscripts) to the Commission no later than 7 business days prior to consideration. Failing to do so will result in default denial of request. Changes cannot be made to the presentation following this submission.

Persons interested in attending and participating in the work session should notify the Committee of their intent to attend and participate in the work session by mail directed to: Rulemaking Committee, Alabama Environmental Management Commission, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at aemc@adem.state.al.us. Notification of intent to attend and participate in the work session must be received by the Rulemaking Committee prior to 5:00 p.m. on **February 6, 2015**.

Persons interested in participating in the work session by teleconference may request to do so and will be provided with a teleconference telephone number to call in to the work session. Participants wanting to provide input through Conference Call need to understand that participation may be limited in engaging their involvement. A request to participate in the work session by teleconference should be directed to the Rulemaking Committee by e-mail at the aemc@adem.state.al.us and received by the Committee prior to 5:00 p.m. on **February 6, 2015**.

Attendance at the work session is not necessary to present comments regarding the Committee's current areas to consider (listed above) regarding the current Rule and other areas of concern regarding the current Rule as the same may be submitted in writing. Written submissions and other inquiries should be directed to: Rulemaking Committee, Alabama Environmental Management Commission, P.O. Box 301463, Montgomery, AL 36130-1463 (street address: 1400 Coliseum Boulevard, Montgomery, AL 36110-2400) or by e-mail at aemc@adem.state.al.us and must be received by the Rulemaking Committee prior to 5:00 p.m. on **February 6, 2015**.

This notice is hereby given this day, **January 21, 2015**, by authority of the Chair of the Rulemaking Committee of the Alabama Environmental Management Commission.


W. Scott Phillips
Chair
AEMC Rulemaking Committee